Supreme Court, U.S.
FILED

No. 02 188 AUG 5 2002

OFFICE OF THE CLERK

In The
Supreme Court of the United States

ADA COUNTY, State of Idaho; VAUGHN KILLEEN, individually and in his capacity of Sheriff of Ada County; GARY GLENN; VERN BISTERFELT; JOHN BASTIDA, Ada County Commissioners, each sued in his individual and official capacities, and RICHARD VERNON, individually and in his capacity as Director of the Idaho Department of Corrections; and their successors in office,

Petitioners,

v.

ROBERT WEBB, Individually, and for all other persons similarly situated; TERRY STERKENBURG; TIMOTHY DRISCOLL; LESA COONTZ; FRANK WALLMULLER; RUSSELL HOWARD; LESLIE IGOU; JOSEPH UHRICH; ROBERT FRIEDLY; KENT HALL; PEGGY KNOX; BILL LOHR; JESSE FULLER; JANE DOE,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

CARY B. COLAIANNI
VALENCIA J. BILYEU
Counsel of Record
ADA COUNTY PROSECUTING ATTORNEY'S OFFICE
Civil Division
200 West Front Street, Rm. 3191
Boise, Idaho 83702
(208) 287-7700

Attorneys for Petitioners

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

The Prison Litigation Reform Act of 1995 (PLRA) expressly prohibits an award of attorney's fees unless the fees were directly incurred in enforcing relief ordered for an actual violation of the plaintiff's rights. The Ninth Circuit held in this case that Ada County must pay for fees incurred for enforcing court ordered relief not related to violations of federal rights. Ada County was also ordered to pay for fees incurred to monitor conditions and orders expressly found on the record *not* to be a violation of civil rights.

The question presented is whether attorney's fees are awardable under the PLRA when they do not directly relate to actual violations and do not directly relate to court ordered relief for the actual violations.

TABLE OF CONTENTS

	Page
Question Presented	i
Table Of Contents	ii
Table Of Authorities	iv
Table Of Appendices	vi
PETITION FOR A WRIT OF CERTIORARI	1
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	1
STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
I. General Background	2
A. Facts of Record Establish No Violations Are Related to Disputed Billings	4
1. Post-PLRA Fees Were Awarded for Issues Which Did Not Result in a Violation of Inmates' Rights	4
2. Post-PLRA Fees Were Awarded for Practices and Policies Not at Issue in the Case	5
3. The Consent Decree Was Not Based upon an Actual Finding of Constitutional Violations	6
4. "Compliance" and "PLRA" Billings Were Not Tied to a Violation	7
REASONS FOR GRANTING THE WRIT	8
I. This Case Presents an Important Question of Federal Law	9

TABLE OF CONTENTS – Continued

Page

A. This Question Has Not Been Settled by this Court 9

1. Under the Prison Litigation Reform Act, Only Fees Directly Connected to a Violation Are Compensable..... 10

2. The PLRA Expressly Prohibits Fees Awarded for Enforcing Orders Unrelated to Violations 11

a. The Ninth Circuit Awarded Attorney's Fees for Enforcing Relief Wholly Unrelated to an Actual Violation 11

b. The Ninth Circuit Awarded Attorney's Fees for Pursuing Issues Wholly Unrelated to the Complaint and Unrelated to an Actual Violation..... 12

c. The Ninth Circuit Awarded Attorney's Fees for Enforcing a Consent Decree Which Was Not Based Upon Findings of Constitutional Violations 13

B. Interpretation of Section 803(d)(1) Is of National Importance 15

II. The Ninth Circuit Decided an Important Federal Question in a Way That Conflicts with a Relevant Decision of this Court 15

III. The Ninth Circuit's Opinion Conflicts with Case Law of Another Court of Appeals..... 16

CONCLUSION 18

TABLE OF AUTHORITIES

Page

CASES:

Hernandez v. Kalinowski, 146 F.3d 196 (3rd Cir. 1998) 17

Johnson v. Breeden, 2002 U.S. App. LEXIS 1115 (11th Cir. 2002) 16

Martin v. Hadix, 527 U.S. 343 (1999) 9, 15

Volk v. Gonzalez, 262 F.3d 528 (5th Cir. 2001) 17

Webb v. Ada County, 285 F.3d 829 (9th Cir. 2002) ..... *passim*

Webb v. Ada County, 195 F.3d 524 (9th Cir. 1999) 5

STATUTES:

Federal Rule of Evidence 408 6

28 U.S.C. § 1254(1) (2002) 1

28 U.S.C. § 1331 1

28 U.S.C. § 1343(a)(3) 1

28 U.S.C. § 1343(a)(4) 1

42 U.S.C. § 1988 ..... 8, 9, 17

42 U.S.C. § 1997(e)(d)(1) 2

Section 803(d) 15

Section 803(d)(i) 15, 16

Section 803(d)(1) 7, 8, 15

Section 803(d)(1)(A) 8, 11, 14, 17

TABLE OF AUTHORITIES – Continued

Page

Section 803(d)(1)(B)(i) 8, 17

Section 803(d)(1)(B)(ii) 8, 11, 16, 17

OTHER:

141 CONG. REC. S14317 (daily ed. Sept 26, 1995) 10

TABLE OF APPENDICES

Page

Appendix A – Opinion of the United States Court of Appeals For the Ninth Circuit Dated and Decided April 4, 2002 ..... App. 1

Appendix B – Partial Consent Decree and Order of the United States District Court for the District of Idaho Dated and Filed April 14, 1995 ..... App. 24

Appendix C – Order of the United States District Court for the District of Idaho Dated and Filed September 29, 1997 ..... App. 42

Appendix D – Order on Supplement Report and Recommendation of the United States District Court for the District of Idaho Dated and Filed March 24, 2000 ..... App. 54

Appendix E – Judgment of the United States District Court for the District of Idaho Dated and Filed April 13, 2000 ..... App. 66

Appendix F – Order of the United States Court of Appeals For the Ninth Circuit Dated and Decided May 21, 2002 ..... App. 67

PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The magistrate court's Order and Recommendation (per Williams, Mikel D.J.) awarding respondents' attorney's fees (Appellants' Ex. of Record, Vol. II, p. 99-121) is not published. The district court's subsequent opinion adopting the magistrate's order (App. 54-65) and Judgment (App. 66) are not published. The Court of Appeals' opinion (per Alarcon, joined by Silverman and Brewster, D.J.) is published at 285 F.3d 829. (App. 1-23.) The Court of Appeals' order denying rehearing and rehearing en banc (App. 67-68) is not published.

STATEMENT OF JURISDICTION

The Court of Appeals entered its opinion on April 4, 2002, and denied rehearing and rehearing en banc on May 21, 2002. Petitioners invoke this Court's jurisdiction under 28 U.S.C. § 1254(1) (2002). The United States District Court for the District of Idaho had subject matter jurisdiction of this case pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4).

STATUTORY PROVISIONS INVOLVED

Section 803(d)(1) of the Prison Litigation Reform Act (PLRA) provides:

> (1) In any action brought by a prisoner who is confined to any jail, prison, and other correctional facility, in which attorney's fees are authorized under section 1988 of this title, such fees shall not be awarded, except to the extent that –
>
> (A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 1988 of this title; and
>
> (B)(i) the amount of the fee is proportionately related to the court ordered relief for the violation; or
>
> (ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.

42 U.S.C. § 1997(e)(d)(1).

STATEMENT OF THE CASE

I. General Background

This case concerns post-judgment post-PLRA attorney's fees in a class-action lawsuit over jail conditions.

Filed in May of 1991, Webb's complaint alleged numerous constitutional violations in the Ada County Jail. (Appellants' Ex. of Record, Vol. I, p. 183.) A summary judgment order in April 1993 found in Webb's favor on one issue. It found a constitutional violation relating to overcrowding. (*Id.* at 184.) The court ordered a series of population caps.

Prior to trial on the other issues, the parties voluntarily entered into a partial consent decree that addressed jail

facilities and policies, including lighting and electrical systems, sanitation, hygiene, clothing, inmate classification, discrimination, communication and mail, and discipline and due process. (App. 24-40.) The partial consent decree was adopted by the court's order of April 14, 1995. Eventually, the trial court would rule that "the overwhelming majority of items addressed in the Partial Consent Decree and Order involved policies and procedures already in effect at the Ada County Jail." (Appellants' Ex. of Record, Vol. I, p. 188.) The trial court never made factual findings of violations relating to the issues addressed in the partial consent decree.

The merits on the remaining issues were heard during a ten (10) day evidentiary hearing in July and August, 1995.

On March 26, 1996, the trial court delivered its decision on the issues and found that a total of three constitutional violations were found in the entire case: 1) overcrowding in the closed custody unit of the jail decided on summary judgment previously, 2) "update" of the jail's law library, and 3) "guidance with respect to special diets." (Appellants' Ex. of Record, Vol. I, p. 189.)

At the end of the merits of the case, the magistrate court found – and the district court affirmed – that Plaintiffs had "cast their net far and wide, yet ensnared within its grasp only a few practices at the Ada County Jail that violated the United States Constitution. The vast majority of practices challenged by the Plaintiffs simply are not constitutionally infirm." (*Id.*)

Billings directly related to enforcing the orders for the three violations constitute 17 hours and are not in dispute.

At dispute are billings not related to the orders and not related to constitutional violations.

A. Facts of Record Establish No Violations Are Related to Disputed Billings

Webb billed for – and the lower courts as well as the Ninth Circuit awarded – time spent that was unrelated to enforcing the court orders for the three violations. Specifically, the contested billings can be grouped in three categories: 1) issues which did not result in a violation of inmates rights; 2) policies and practices which were not at issue in the case; and 3) monitoring a consent decree which was not based upon findings of constitutional violations.

1. Post-PLRA Fees Were Awarded for Issues Which Did Not Result in a Violation of Inmates' Rights

Webb billed post-PLRA time on four areas that the court found met constitutional standards. The four areas are staffing, contempt, sanctions, and medical care. First, relating to staffing, the record reflects that there was no constitutional violation. The court specifically found that Webb "failed to establish that any perceived understaffing is leading to unconstitutional conditions of confinement." (Appellants' Ex. of Record, Vol. I, p. 136.) The court further stated that "[a]t no time has this Court found that staffing of the [Ada County Jail] in and of itself was violative of the United States Constitution." (Appellees' Second Supp. Ex. of Record, p. 162.) Yet, Webb was awarded fees on staffing.

Second, Webb requested 10.2 hours in post-PLRA fees for a contempt award (regarding staffing) even though the district court stated that it was a "technical violation and

not a violation that resulted in any inmate's constitutional rights being violated." (Appellants' Ex. of Record, Vol. I, p. 275.) *Webb v. Ada County*, 285 F.3d 829, 839 (9th Cir. 2002). (*Webb III*.) The fees were awarded by the Ninth Circuit, which stated: "The record shows, however, that Webb's contempt and discovery motions were *directly related to his underlying § 1983 cause of action.*" *Id.* at 837 (emphasis added).

Third, Webb billed 27.9 hours for post-PLRA discovery sanctions regarding staffing or discovery records. There was no violation of constitutional rights regarding staffing or discovery, but Webb was awarded attorney fees for the sanction motion. *Id.* at 837-841.

Finally, Webb billed for post-PLRA time spent on the medical care system. The lower courts and the Ninth Circuit found the system constitutional. *Webb v. Ada County*, 195 F.3d 524, 527 (9th Cir. 1999). Yet, Webb was awarded post-PLRA fees on medical care.

2. Post-PLRA Fees Were Awarded for Practices and Policies Not at Issue in the Case

Two issues, cots and abortions, were not at issue in the case. Webb attempted to contest the use of cots. The district court stated that "the constitutionality of using cots is not at issue in the present case, and the court declines to rule on such questions." (Appellants' Ex. of Record, Vol. I, p. 208; App. 51.) Webb also attempted to incorporate the jail's abortion policy in his case. The court refused to consider the constitutionality of the policy in the *Webb* case and explained that a new lawsuit could be filed

on the policy. (Dist. Ct. Order Adopting Report and Recommendation, Mar. 7, 1996, Dkt. 378.) Again, Webb billed for, and was awarded, post-PLRA time related to cots and abortion.

3. The Consent Decree Was Not Based upon an Actual Finding of Constitutional Violations

The district court recognized that the "overwhelming majority" of issues "in the consent decree and order involved policies and procedures already in effect at the Ada County Jail." (Appellants' Ex. of Record, Vol. I, p. 188.) The consent decree was entered in the interest of "avoid[ing] litigation of the merits of the terms agreed to." (App. 26.) The parties specifically agreed the consent decree did not constitute an admission that any previous or existing condition, policy, procedure, or act "was or is in any way improper, negligent, unconstitutional, or in violation of any right of Plaintiffs." *Id.* It was a settlement negotiation pursuant to Federal Rule of Evidence 408.

The record reflects that several consent decree subjects were found *not* to constitute constitutional violations. For instance, the heating, ventilation and air-conditioning system was addressed in the consent decree. One year later, the magistrate explicitly found that "plaintiffs simply have not shown evidence from which the court can conclude that the temperatures in the Ada County Jail amount to cruel and [un]usual punishment by denying prisoners the 'minimal civilized measure of life's necessities.'" (Appellants' Ex. of Record, Vol. I, p. 137.) Adopting the magistrate's recommendation, the district court found that there was "no constitutional violation" and that continued monitoring was not appropriate. (*Id.* at 141.)

Likewise, staffing was addressed in the consent decree. (App. 35.) Later the court stated, "At no time has this Court found that staffing of the [Ada County Jail] in and of itself was violative of the United States Constitution." (Appellees' Second Supp. Ex. of Record, p. 162.) The consent decree also addressed postage and supplies for indigent prisoners, but the court later found on the record that Webb had "failed to establish a constitutional claim." (Appellants' Ex. of Record, Vol. I, p. 153.)

The record contains no findings of violations related to issues addressed in the consent decree. Yet, Ada County was ordered to pay for attorney time spent monitoring the consent decree.

4. "Compliance" and "PLRA" Billings Were Not Tied to a Violation

A substantial portion of Webb's post-PLRA billings are generically identified as "compliance" or "PLRA" work. In his post-judgment post-PLRA fee petitions, Webb requested approximately 75 hours under the title of "compliance." (Appellants' Ex. of Record, Vol. II, pp. 8-14.) Neither Webb nor the record tie those billings to an order for a violation.

Also, Webb's attorney sought 83.1 hours for fees he referred to as "PLRA Time." (*Id.* at 15-18.) This time was spent objecting to Ada County's motion to terminate the partial consent decree brought pursuant to the PLRA. It includes briefing and arguing the issue of Section 803(d)(1). Once again, neither Webb nor the courts tied these fees to a violation of Webb's rights.

The District Court and the Ninth Circuit allowed all of Webb's post-PLRA billings (albeit at a discounted rate).

REASONS FOR GRANTING THE WRIT

The main question presented is whether a fee for enforcing court ordered relief is allowable when the relief is not related to a finding of an actual violation of an inmate's constitutional rights. The question presented also concerns whether a court must take into account the terms of a mutually agreed upon consent decree and the actual findings of fact made in the record.

This petition should be granted for three reasons. First, this case involves a question of federal law that has not been, but should be, settled by this Court. The question is whether the PLRA prohibits an award of fees where they are not directly incurred in enforcing relief ordered for a proven violation. In essence, the Ninth Circuit's opinion has taken the words "direct" and "actual violation" out of Section 803(d)(1). The Circuit's opinion allows an award of fees incurred in the absence of a violation directly related to the fees requested.

Fees awarded to inmates under 42 U.S.C. § 1988 were drastically changed by the PLRA. Section 803(d)(1) provides that fees are prohibited unless the fee meets two requirements. First, the fee must be directly related to an actual violation. Second, the fee must be either *proportionately related* to the court ordered relief for the violation, Section 803(d)(1)(B)(i), *or* the fee must be *directly incurred in enforcing* court ordered relief for the violation, Section 803(d)(1)(B)(ii). This petition concerns the interpretation and application of Section 803(d)(1)(A) and (B)(ii). It also presents the issue of how a court analyzes and applies the prohibitions of the PLRA.

Second, the Ninth Circuit decided an important federal question in a way that conflicts with this Court's

decision in *Martin v. Hadix*, 527 U.S. 343 (1999). In *Hadix*, this Court says that the PLRA sets substantive limits on attorney's fee awards prohibiting awards "unless those fees were 'directly and reasonably incurred' in the suit, *and* unless those fees are 'proportionately related' to *or* 'directly and reasonably incurred in enforcing' the relief ordered." *Id.* at 353 (emphasis added). The Ninth Circuit "disagree[s.]" *Webb III*, 285 F.3d at 834.

Third, the Ninth Circuit's decision conflicts with case law in the Third, Fifth and Eleventh Circuits. Those Circuits require that the fees be directly related to an actual violation of record.

The Court should grant the Petition for a Writ of Certiorari.

I. This Case Presents an Important Question of Federal Law

A. This Question Has Not Been Settled by this Court

The Ninth Circuit's opinion decides an important question of federal law. It has held that the PLRA's attorney's fee prohibition does not preclude an award of fees if there is so much as a single violation found in a case, even when that violation has no relation to the fees awarded. The question has not been settled by this Court. It should be settled for the simple reason that the Circuit's decision will now allow plaintiffs in jail conditions cases to recoup attorney's fees for conditions not found to be unconstitutional, in direct contravention of the PLRA. The Circuit's decision essentially returns prison litigation to a "prevailing party" analysis under 42 U.S.C. § 1988.

Congress' intent in passing the PLRA was to prevent payment of attorney's fees that were not incurred in proving an actual violation of an inmate's rights. Congress specified that the only fees to be paid by defendants are those hours directly related to the finding of a violation or to court ordered relief for a violation. Hours expended on unsuccessful claims are not to be awarded.

In presenting the legislation, Sen. Abraham stated that "[p]risoners who succeed in proving a statutory violation will be reimbursed *only* for fees directly and reasonably incurred in proving *that* violation." 141 CONG. REC. S14317 (daily ed. Sept. 26, 1995) (emphasis added). Sen. Abraham was emphatic that courts not award attorney's fees "simply because the prison has changed preexisting conditions. Only if those conditions violated a prisoner's rights will fees be awarded." *Id.* Yet, Ada County was forced to pay for monitoring of "policies and procedures *already in effect* at the Ada County Jail." (Appellants' Ex. of Record, Vol. I, p. 188.) (emphasis added).

1. Under the Prison Litigation Reform Act, Only Fees Directly Connected to an Actual Violation Are Compensable

The PLRA requires that all fee awards be directly linked to actual violations. The only constitutional violations found in this case were overcrowding, special diets and the law library. The court ordered relief for all three violations. Fees incurred in proving these violations – and in monitoring court ordered relief – are compensable and not at issue.

2. The PLRA Expressly Prohibits Fees Awarded for Enforcing Orders Unrelated to Violations

The statute plainly states that fees incurred for enforcing relief will only be paid if the relief was ordered for an actual violation. The pertinent portion of the statute says the fees must be directly "incurred in enforcing the relief ordered for *the violation*." Section 803(d)(1)(B)(ii) (emphasis added). The words "the violation" refer to an "actual violation" of an inmate's rights found in Section 803(d)(1)(A). The Ninth Circuit's analysis does not even discuss a specific violation of record. Rather, it relied upon one conclusionary statement by the district court that "violations of Federal rights were found." (Appellants' Ex. of Record, Vol. I, p. 286.) The violations referred to by the district court were overcrowding, library and special diets. But the court used those limited violations to justify awarding all fees. The Ninth Circuit did not require the fees to be tied to specific violations as required by the PLRA.

a. The Ninth Circuit Awarded Attorney's Fees for Enforcing Relief Wholly Unrelated to an Actual Violation.

The court awarded fees for enforcing relief for contempt and sanctions completely unrelated to actual violations. Both the contempt and sanctions related to the issue of staffing. The district court expressly found that "[a]t no time has this Court found that staffing of the [Ada County Jail] in and of itself was violative of the United States Constitution." (Appellees' Second Supp. Ex. of Record, p. 162.)

Rather than following the PLRA's requirement that the contempt and sanctions be directly related to an actual violation, the Circuit stated that the contempt and discovery sanctions were related to Webb's "cause of action." *Webb III*, 285 F.3d at 837. Later, in its Opinion, the Ninth Circuit relied upon the district court's finding that the contempt violation "did not result in any inmate's constitutional rights being violated." *Id.* at 839. Nevertheless, the Circuit did not deny post PLRA attorney's fees for contempt or sanctions. *Id.* at 837-841.

b. The Ninth Circuit Awarded Attorney's Fees for Pursuing Issues Wholly Unrelated to the Complaint and Unrelated to an Actual Violation

The district court awarded, and the Ninth Circuit affirmed, fees for issues not even alleged in the complaint. For example, neither the use of cots nor the jail's abortion policy were at issue. The district court explicitly found that "the constitutionality of using cots is *not* at issue." (Appellants' Ex. of Record, Vol. I, p. 208.) (Emphasis in orig.) Likewise, Webb attempted to attack the constitutionality of the jail's abortion policy. The court refused to hear the issue and told Webb to file a new lawsuit to challenge the policy. *Id.* The court, however, awarded attorney's fees to Webb for post-PLRA work on cots and abortion. This is clearly prohibited by the PLRA.

c. The Ninth Circuit Awarded Attorney's Fees for Enforcing a Consent Decree Which Was Not Based Upon Findings of Constitutional Violations

The consent decree was not based upon findings of constitutional violations. The court emphasized that the "overwhelming majority" of conditions addressed in the consent decree "involved *policies and procedures already in effect* at the Ada County Jail." (Appellants' Ex. of Record, Vol. I, p. 188.) (emphasis added.)

The consent decree was a compromise settlement for numerous issues that the parties had no interest in taking to trial. (App. 26.) The parties specifically agreed the consent decree did not constitute an admission that any previous or existing condition, policy, procedure, or act "was, or is, in any way improper, negligent, unconstitutional, or in violation of any right of Plaintiffs."(*Id.* at 27.)

The consent decree issues were never found to be violative of the Constitution. In fact, the district court made specific findings that several of the issues were constitutionally adequate. The heating, ventilation and air conditioning system was addressed in the consent decree. Later, the court found "plaintiffs simply have not shown evidence from which the court can conclude that the temperatures in the Ada County Jail amount to cruel and [un]usual punishment by denying prisoners the minimal civilized measure of life's necessities." (Appellants' Ex. of Record, Vol. I, p. 137.) Likewise, the court found that staffing was not violative of Federal rights.

The district court recognized that there were no findings of record created pertaining to the consent decree.

(Appellants' Ex. of Record, Vol. I, p. 132; 286.) Yet, the court awarded fees "regardless of the language of the consent decree." (App. 63.)

Even Webb admitted there were no findings of violations relating to the merits of the issues in the consent decree. Webb claimed, "[i]t is inappropriate and unnecessary for purposes of an award of attorney's fees for the court to decide on the merits of issues which have been settled in the Consent Decree." (Appellees' Second Supp. Ex. of Record, p. 117.) Webb proclaimed that he did not "have to prove a constitutional violation" under Section 803(d)(1)(A) to be paid. (Appellants' Ex. of Record, Vol. II, p. 43.)

The Ninth Circuit based its opinion on one conclusory statement written by the district court *years* after the merits of the case were over. "Based upon rulings by this court and the magistrate judge prior to the approval of the Consent Decree, violations of federal rights were found." (Appellants' Ex. of Record, Vol. I, p. 286.) The record simply does not support the statement. The only violation found before the Consent Decree was overcrowding. The court ordered a series of population caps to address overcrowding.

The Ninth Circuit failed to require that relief (including consent decrees) be a result of *an actual violation*. The Circuit therefore erred when it concluded that all of "Webb's attorney's fees incurred for post-judgment enforcement of the district court's orders and the consent decree were compensable." *Webb III*, 285 F.3d at 835. The Circuit misinterpreted the PLRA. Congress only provided for fees incurred in enforcing court ordered relief *for the violation*.

B. Interpretation of Section 803(d)(1) Is of National Importance

This is clearly an issue of national import. The effect on prisoner litigation in the United States would be profound in terms of allowing attorney's fees in prisoner litigation even where the fees were unrelated to a finding of an unconstitutional condition.

Section 803(d)(1) of the PLRA prohibits any award of fees where the fees are not "directly and reasonably incurred" in proving an actual violation of a prisoner's constitutional rights or monitoring a condition found to have violated his constitutional rights.

This Court has not answered the question of whether the federal courts are prohibited from granting fees for work in prison litigation where the work is neither directly incurred in proving an actual violation of a plaintiff's rights nor directly incurred in enforcing the relief ordered for the violation. This case squarely presents the opportunity.

II. The Ninth Circuit Decided an Important Federal Question in a Way That Conflicts with a Relevant Decision of this Court

The Ninth Circuit's decision directly conflicts with this Court's decision in *Martin v. Hadix*, 527 U.S. 343 (1999).

In *Hadix*, this Court said "the fee landscape changed with the passage of the PLRA on April 26, 1996." *Id.* at 349. *Hadix* held section 803(d) sets "substantive limits on the award of attorney's fees." *Id.* at 353. This Court acknowledged Congress' mandate that the fees awarded be

"directly incurred" in either proving an actual violation or directly incurred in enforcing relief ordered for a violation.

In stark contrast, the Ninth Circuit's decision leaves the old "landscape" unchanged.

The Ninth Circuit ignored the "substantive limits" on attorney's fees mandated by the PLRA. Subsection 803(d)(1)(B)(ii) requires that the fees be "directly and reasonably incurred in *enforcing* the *relief ordered* for the violation." *Webb III*, 285 F.3d at 834 (emphasis in original).

The Ninth Circuit's decision takes out the substantive language of 803(d)(i) that the fee be "directly . . . incurred in enforcing the relief ordered *for the violation*." Section 803(d)(1)(B)(ii) (emphasis added).

III. The Ninth Circuit's Opinion Conflicts with Case Law of Another Court of Appeals

The Ninth Circuit's decision is directly in conflict with cases decided by the Third, Fifth and Eleventh Circuits.

In *Johnson v. Breeden*, 2002 U.S. App. LEXIS 1115 (11th Cir. 2002), plaintiff filed a variety of claims under § 1983. A jury found that plaintiff proved only a violation of his rights under the Eighth Amendment. Plaintiff submitted documentation that his attorneys had spent over 1000 hours on the case. The district court found the hours were "reasonable" and awarded all of the hours, including those spent on unsuccessful claims (where plaintiff did not prove an actual violation). The Eleventh Circuit held that the district court abused its discretion when it awarded fees not directly incurred in successfully proving the excessive force claim. In contrast, the Ninth

Circuit approved fees not directly incurred in proving an actual violation of record.

In *Volk v. Gonzalez*, 262 F.3d 528 (5th Cir. 2001), the Fifth Circuit emphasized that the PLRA "expressly precludes the recovery of any and all attorney's fees otherwise authorized by § 1988 that are not 'directly and reasonably incurred in proving an actual violation of the plaintiff's rights.'" *Id.* at 536. The Ninth Circuit awarded fees in the absence of an actual violation related to the fees.

In *Hernandez v. Kalinowski*, 146 F.3d 196 (3rd Cir. 1998), the inmate sought damages for, and proved, a violation of his Eighth Amendment rights. Thereafter, he sought fees. The Third Circuit examined the PLRA and stated that it provides fees which meet both 803(d)(1)(A) *and* (B)(i) or B(ii). *Id.* at 199. It recognized that the Congressional intent behind the PLRA was to pay fees for meritorious claims. In the case at bar, Ada County argued that a fee request must satisfy both 803(d)(1)(A) and (B)(i) or B(ii). The Ninth Circuit stated, "we disagree." *Webb III*, 285 F.3d at 834.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

CARY B. COLAIANNI
VALENCIA J. BILYEU
Counsel of Record
ADA COUNTY PROSECUTING
ATTORNEY'S OFFICE
Civil Division
200 West Front Street, Rm. 3191
Boise, Idaho 83702
(208) 287-7700

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT WEBB, Individually, and for all other persons similarly situated; TERRY STERKENBURG; TIMOTHY DRISCOLL; LESA COONTZ; FRANK WALLMULLER; RUSSELL HOWARD; LESLIE IGOU; JOSEPH UHRICH; ROBERT FRIEDLY; KENT HALL; PEGGY KNOX; BILL LOHR; JESSE FULLER; JANE DOE,

Plaintiffs-Appellees,

v.

ADA COUNTY, State of Idaho; VAUGHN KILLEEN, individually and in his capacity of Sheriff of Ada County; GARY GLENN; VERN BISTERFELT; JOHN BASTIDA, Ada County Commissioners, each sued in his individual and official capacities,

Defendants-Appellants.

and

RICHARD VERNON, individually and in his capacity as Director of the Idaho Department of Corrections; and their successors in office,

Defendant.

No. 00-35338

D.C. No.
CV-91-00204-EJL

ROBERT WEBB, Individually, and for all other persons similarly situated; TERRY STERKENBURG; TIMOTHY DRISCOLL; LESA COONTZ; FRANK WALLMULLER; LESLIE IGOU; JOSEPH UHRICH; ROBERT FRIEDLY; KENT HALL; PEGGY KNOX; BILL LOHR; JESSE FULLER; JANE DOE; RUSSELL HOWARD,

Plaintiffs-Appellants,

v.

ADA COUNTY, State of Idaho; VAUGHN KILLEEN, individually and in his capacity of Sheriff of Ada County; GARY GLENN; VERN BISTERFELT; JOHN BASTIDA, Ada County Commissioners, each sued in his individual and official capacities,

Defendants-Appellees.

No. 00-35787

D.C. No. CV-91-00204-EJL

ROBERT WEBB, Individually, and for all other persons similarly situated; TERRY STERKENBURG; TIMOTHY DRISCOLL; LESA COONTZ; FRANK WALLMULLER; LESLIE IGOU; JOSEPH UHRICH; ROBERT FRIEDLY; KENT HALL; PEGGY KNOX; BILL LOHR; JESSE FULLER; JANE DOE; RUSSELL HOWARD,

Plaintiffs-Appellees,

v.

ADA COUNTY, State of Idaho; VAUGHN KILLEEN, individually and in his capacity of Sheriff of Ada County; GARY GLENN; VERN BISTERFELT; JOHN BASTIDA, Ada County Commissioners, each sued in his individual and official capacities,

Defendants-Appellants.

No. 00-35842

D.C. No.
CV-91-00204-EJL

OPINION

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Argued and Submitted
March 6, 2002 – Seattle, Washington

Filed April 4, 2002

Before: Arthur L. Alarcon, and Barry G. Silverman, Circuit Judges, and Rudi M. Brewster,* District Judge.

Opinion by Judge Alarcon

COUNSEL

Howard A. Belodoff, Belodoff Law Office, Boise, Idaho, for the plaintiffs/appellees/appellants.

Cary B. Colaianni, Deputy Prosecuting Attorney, and Valencia J. Bilyeu, Deputy Prosecuting Attorney, Boise, Idaho, for the defendants/appellants/appellees.

OPINION

ALARCON, Circuit Judge:

Robert Webb and several plaintiffs in this civil rights class action ("Webb") appeal from the district court's judgment awarding only a percentage of the postjudgment attorney's fees Webb requested. Ada County, Idaho ("Ada County") separately appeals, arguing that the district court should not have awarded any of these attorney's fees as they were not "directly and reasonably incurred in proving an actual violation" of Webb's rights, as is required by the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321 (1996) ("PLRA"). We affirm the district court's determination that the postjudgment attorney's fees Webb requested were compensable under the PLRA, because the fees were directly incurred in

* Honorable Rudi M. Brewster, Senior United States District Judge for the Southern District of California, sitting by designation.

enforcing court ordered relief instituted to correct violations of Webb's constitutional rights. We vacate and remand a portion of the district court's fee award, however, because we find it erred in determining the applicable PLRA hourly rate and abused its discretion in not providing an adequate explanation for its substantial reduction of Webb's fee requests on three matters.

I

In 1991, Webb brought a class action pursuant to 42 U.S.C. § 1983 alleging unconstitutional conditions for prisoners in the Ada County Jail. The district court granted Webb partial summary judgment, finding that the jail's overcrowding was unconstitutional and was a major cause of Webb's other complaints. Through court orders and a partial consent decree, Webb prevailed on many of his claims. Pursuant to 42 U.S.C. § 1988, the court awarded Webb $244,308.00 in attorney's fees for his attorneys' work on the merits of the § 1983 action. In an unpublished order, we affirmed the district court's disposition of the merits of Webb's claims. *Webb v. Ada County, Idaho,* 145 F.3d 1343, 1998 WL 246521 (9th Cir. 1998) (*"Webb I"*).

After the district court's judgment on the merits, Webb's attorneys performed legal services to enforce the court's orders and the terms of the consent decree. Webb requested an award of attorney's fees for this service. The district court found that Webb was partially successful in his postjudgment efforts and awarded him $9,495.00 in attorney's fees. Webb filed an appeal in which he challenged the amount of the award. *Webb v. Ada County, Idaho,* 195 F.3d 524, 525 (9th Cir. 1999) (*"Webb II"*). In

Webb II, we affirmed in part the district court's award of post-judgment attorney's fees but remanded so that the district court could apply the rate cap provisions of the PLRA to the portion of postjudgment attorney's fees earned after the effective date of the statute. ***Id.*** at 528.

On remand, Ada County objected to the award of any post-judgment attorney's fees, arguing that they were not compensable under the PLRA because they were not reasonably and directly incurred in proving an actual violation of Webb's constitutional rights. In rejecting Ada County's argument, the district court concluded that the postjudgment fees were related to the enforcement of court-ordered relief for violations of Webb's constitutional rights. After applying the PLRA, the district court reduced the amount of attorney's fees to $6,036.25. The district court also awarded Webb an additional $17,290.50 for the services performed by Webb's attorneys since the first award of attorney's fees for enforcing and monitoring compliance with the judgment on the merits and the entry of the consent decree.

Ada County and Webb filed separate appeals from the district court's award of postjudgment attorney's fees. We have consolidated their appeals. We have jurisdiction pursuant to 28 U.S.C. § 1291.

II

Ada County's Appeal

Ada County argues that the district court erred in awarding attorney's fees for the services rendered by

Webb's attorneys subsequent to the PLRA's effective date of April 26, 1996.[1] We review the district court's award of attorney's fees for abuse of discretion. *Native Vill. of Venetie Ira Council v. Alaska,* 155 F.3d 1150, 1151 (9th Cir. 1998). We review a district court's interpretation of the law de novo. ***Id.*** at 1151-52.

The PLRA limits the amount of attorney's fees that can be awarded for services performed in actions brought on behalf of prisoners. The portion of the PLRA relevant to this appeal provides:

> (1) In any action brought by a prisoner who is con fined to any jail, prison, or other correctional facility, in which attorney's fees are authorized under section 1988 of this title, such fees shall not be awarded, except to the extent that –
>
> (A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 1988 of this title; and
>
> (B)(i) the amount of the fee is proportionately related to the court ordered relief for the violation; or

[1] Ada County is challenging Webb's award of postjudgment attorney's fees that were incurred for the following tasks: bringing contempt and sanctions motions to enforce the district court's orders, monitoring Ada County's compliance with the consent decree, opposing application of the PLRA to the fee requests, briefing the district court on the retroactive application of the PLRA, replying to Ada County's objection to the fee award, replying to Ada County's motion to terminate the consent decree, and fees-on-fees.

> (ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.

42 U.S.C. § 1997e(d).

Ada County argues that "[a] fee request must satisfy (A) *and* (B)(i) or (B)(ii)." Ada County contends that Webb did not demonstrate that any constitutional violations occurred after the judgment and consent decree were entered. Ada County maintains that Webb is not entitled to attorney's fees incurred in monitoring and enforcing the judgment and consent decree pursuant to the PLRA because Webb failed to demonstrate that the postjudgment fees were incurred in proving an actual violation of the Constitution. We disagree. Ada County's interpretation of the PLRA would render the language of subsection (B)(ii) superfluous. Subsection (B)(ii) requires that the fees be "directly and reasonably incurred in *enforcing* the *relief ordered* for the violation." 42 U.S.C. § 1997e(d)(1)(B)(ii) (emphasis added). If a postjudgment fee request could only be granted if the attorney's services were directly linked to a discrete constitutional violation, fees incurred "in enforcing the relief" that the court had ordered because of demonstrated previous constitutional violations, could not be awarded. To the contrary, when subsections (A) and (B) are read together, it is apparent that Congress intended that a plaintiff is entitled to fees incurred in enforcing a judgment entered upon proof that the plaintiff's constitutional rights had been violated. The PLRA defines relief as "all relief in any form that may be granted or approved by the court, and includes consent decrees." 18 U.S.C. § 3626(g)(9). Therefore, Webb's attorney's fees incurred for postjudgment enforcement of the district court's orders

and the consent decree were compensable under the PLRA.

Ada County's argument that Webb is not entitled to attorney's fees incurred in enforcing the consent decree ignores findings by the district court that it corrected violations of Webb's rights. After the enactment of the PLRA, Ada County brought a motion to terminate the consent decree. It asserted that the consent decree did not comply with the requirements of the PLRA. The PLRA provides for the immediate termination of any consent decree unless

> the court makes written findings based on the record that prospective relief remains necessary to correct a current or ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the prospective relief is narrowly drawn and the least intrusive means to correct the violation.

18 U.S.C. § 3626(b)(3). The district court denied Ada County's motion to terminate the consent decree. It reasoned as follows:

> Based upon the rulings by this Court and the magistrate judge prior to the approval of the Partial Consent Decree, violations of Federal rights were found. Additionally, the relief set forth in the Partial Consent Decree was narrowly drawn and extended no further than necessary to correct the violation of the Federal rights.

Thus, in holding that the consent decree met the requirements of the PLRA, the district court found that the consent decree corrected violations of Webb's constitutional rights.

The district court's judgment and the consent decree were instituted to correct federal constitutional violations of Webb's rights. The attorney's fees Webb requested for post-judgment work were incurred in enforcing and monitoring the court's judgment and the consent decree, or were directly related to the services performed in Webb's litigating requests for attorney's fees under the PLRA. The district court did not err in ruling that Webb's attorney's fees were compensable under the PLRA.

III

Webb's Appeal

A.

Webb contends that the district court erred in calculating the award of attorney's fees. Ada County asserts that we have no jurisdiction to consider the merits of Webb's appeal because it was filed beyond the 30-day deadline prescribed by Fed. R. App. P. 4(a).[2] Therefore, as a

---

[2] Rule 4(a) provides as follows:

(1)(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

...

(4)(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

...

(iv) to alter or amend the judgment under Rule 59;

....

Fed. R. App. P. 4(a).

threshold matter, we must determine whether we have jurisdiction over Webb's appeal. *See Browder v. Dir., Dept. of Corr.*, 434 U.S. 257, 264 (1978) (stating 30-day time limit is "mandatory and jurisdictional").

After our remand in *Webb II*, the district court filed its judgment regarding Webb's request for postjudgment attorney's fees on April 13, 2000. Webb timely filed a motion to alter or amend the judgment under Fed. R. Civ. P. 59(e).[3] The district court granted in part and denied in part Webb's Rule 59(e) motion in an order filed June 26, 2000. The district court entered a final judgment regarding the Rule 59(e) motion on August 18, 2000. Webb filed his notice of appeal on August 29, 2000.

The 30-day period for Webb's appeal began to run "from the entry of the order disposing of" his Rule 59(e) motion. Fed. R. App. P. 4(a)(4)(A)(iv). An order is entered for the purposes of Rule 4(a)(4)(A)(iv) when it is entered in compliance with Fed. R. Civ. P. 58. Rule 58 requires that "[e]very judgment shall be set forth on a separate document." Ada County contends that the 30-day period began to run from the district court's June 26, 2000 *order* granting in part and denying in part Webb's Rule 59(e) motion rather than the *judgment* entered on the Rule 59(e) motion on August 18, 2000. In support of this contention, Ada County relies upon *Hollywood v. City of Santa Maria*, 886 F.2d 1228 (9th Cir. 1989). In *Hollywood*, we held that

---

[3] Rule 59(e) provides:

> Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

Fed.R.Civ.P. 59(e).

when a district court properly enters an order on the docket denying a party's Rule 59 motion for a new trial, it is not required to enter a separate document labeled "judgment" to start the 30-day period for the filing of a notice of appeal. 886 F.2d at 1231-32. We reasoned in *Hollywood* that the Rule 58 requirement that a separate document be filed

> serves to eliminate confusion as to which order ends the litigation .... No comparable risk of confusion exists with respect to an order denying a motion for new trial where the order is properly entered on the docket sheet. In this case, as is generally the case in the Rule 59 context, the order denying the motion for new trial definitively signaled the end of the litigation.

Id. at 1232. We held in *Hollywood* that the 30-day period begins to run when the district court enters a final order denying a Rule 59 motion. ***Id.***

In *Hollywood,* however, we distinguished a Second Circuit case that held where a district court *grants* a Rule 59(e) motion and subsequently enters a new judgment, the 30-day period begins to run from the entry of the new judgment, not from the order granting the Rule 59(e) motion. ***Id.*** at 1232 n.8. In the instant matter, in its June 26, 2000 order, the district court granted in part and denied in part Webb's Rule 59(e) motion to alter or amend the judgment. The court ordered the parties to submit a proposed amended judgment within 14 days. Thus, this case is distinguishable from the factual scenario in *Hollywood.* Here, the district court did not simply deny Webb's motion to alter or amend the judgment. Instead, the district court ordered the parties to submit a final judgment for the court's approval within 14 days. Webb timely

filed his appeal because the 30-day period began to run when the court filed its amended judgment on August 18, 2000.

B.

Turning to the merits of Webb's appeal, Webb argues that the district court made several errors in calculating the final award of attorney's fees. A district court's award of attorney's fees is reviewed for abuse of discretion. *Schwarz v. Sec'y of Health & Human Servs.*, 73 F.3d 895, 900 (9th Cir. 1995). "[A]ny elements of legal analysis and statutory interpretation which figure in the district court's decision are reviewable *de novo*. A district court's fee award does not constitute an abuse of discretion unless it is based on an inaccurate view of the law or a clearly erroneous finding of fact." *Id.* (quotations and citations omitted).

1.

Webb first contends that the district court erred in applying the PLRA's rate cap to attorney's fees relating to motions for contempt and discovery sanctions. He argues that since the contempt and discovery sanctions fees were awarded under 18 U.S.C. § 401 and Fed. R. Civ. P. 37, these fees should not be limited by the PLRA rate cap because the PLRA applies *only* to fees awarded pursuant to 42 U.S.C. § 1988.[4] The record shows, however, that

[4] The PLRA provides in relevant part:

> In any action brought by a prisoner who is confined to any jail, prison, or other correctional facility, in which attorney's

(Continued on following page)

Webb's contempt and discovery motions were directly related to his underlying § 1983 cause of action. The discovery sanctions were ordered against Ada County for refusing to turn over documents related to the jail's staffing levels. The purpose of the PLRA "was apparently to curtail frivolous prisoners' suits and to minimize the costs – which are borne by taxpayers – associated with those suits." *Madrid v. Gomez,* 190 F.3d 990, 996 (9th Cir. 1999). Given this purpose, it is unlikely that Congress intended that only *part* of the attorney's fees awarded in a prisoner lawsuit be subject to the PLRA rate cap. Congress' desire to reduce the costs of these lawsuits would not be furthered by awarding attorney's fees piecemeal; Webb's interpretation of the PLRA's scope would increase litigation over which fees should be paid at which rate. The district court did not abuse its discretion by applying the PLRA rates to fees related to motions for contempt and discovery sanctions.

2.

The district court applied the PLRA rate cap to all fees relating to work that Webb's attorneys performed after the PLRA's effective date of April 26, 1996. Webb contends that a portion of these post-PLRA attorney's fees were not incurred in postjudgment monitoring services, but rather related to the merits of the case. Webb asserts that the PLRA rate cap should not apply to the portion of fees

---

fees are authorized under section 1988 of this title, such fees shall not be awarded, except to the extent that. . . .

42 U.S.C. § 1997e(d)(1).

related to the merits of the case because this would create an "impermissible effect on counsels' expectation as to their compensation when they undertook the representation." In *Martin v. Hadix,* 527 U.S. 343 (1999), the Supreme Court held that the PLRA rate cap does not apply to postjudgment monitoring work performed before the PLRA's effective date, but that "[w]ith respect to postjudgment monitoring performed after the effective date . . . there is no retroactive effect, and the PLRA fees cap applies to such work." 527 U.S. at 361-62. Webb argues that *Martin* did not foreclose his argument because *Martin* only discussed fees earned for postjudgment monitoring, as opposed to fees earned relating to the merits of a case. Webb's reading of *Martin,* however, is too narrow. In reaching its holding, the *Martin* Court reasoned that the PLRA put attorneys

> on notice that their hourly rate had been adjusted . . . . After April 26, 1996, any expectation of compensation at the pre-PLRA rates was unreasonable. There is no manifest injustice in telling an attorney performing postjudgment monitoring services that, going forward, she will earn a lower hourly rate than she had earned in the past. If the attorney does not wish to perform services at this new, lower pay rate, she can choose not to work. In other words, as applied to work performed after the effective date of the PLRA, the PLRA has future effect on future work; this does not raise retroactivity concerns.

Id. at 360.

In holding that the PLRA has no retroactive effect on work performed after the effective date, the *Martin* Court rejected "the assumption that the attorney's initial decision to file a case on behalf of a client is an irrevocable

one" or "that once an attorney files suit, she must continue working on that case until the decree is terminated." ***Id.*** at 361. Webb maintains that this case is distinguishable from the situation presented in *Martin* because his "counsel was practically and ethically prevented from withdrawing prior to the final determination on the merits" of the case. The Idaho Rules of Professional Conduct, however, allow an attorney to withdraw from a case if "the representation will result in an unreason able financial burden on the lawyer." Idaho R. Prof'l Conduct 1.16(b)(5). The attorneys here neither requested withdrawal nor evidenced any desire to withdraw from the case. *See Martin,* 527 U.S. at 361 ("[Respondents] do not seriously contend that the attorneys were prohibited from withdrawing from the case.").

The Court's reasoning in *Martin* regarding the retroactive effect of the PLRA was not limited to fees relating to postjudgment monitoring. "It cannot be said that the PLRA changes the legal consequences of the attorneys' pre-PLRA decision to file the case." ***Id.*** Therefore, all fees incurred for attorney's services performed after the PLRA's effective date of April 26, 1996 are subject to the PLRA rate cap. The district court did not err in applying the PLRA rate cap to all fees, whether related to the merits or postjudgment monitoring, earned after the PLRA's effective date.

3.

Webb also contends that the district court erred by applying an incorrect hourly rate in calculating attorney's fees under the PLRA. We agree. Webb asked the district court to apply a baseline hourly rate of $75, as authorized

by the Judicial Conference pursuant to the Civil Justice Reform Act, 18 U.S.C. § 3006A. The district court rejected Webb's argument and determined that the baseline rate should be $65 for in-court time and $45 for out-of-court time, which are the rates actually paid to court-appointed counsel in the District of Idaho under § 3006A.

The PLRA prohibits a district court from awarding fees at an hourly rate "greater than 150 percent of the hourly rate established under section 3006A of Title 18, for payment of court-appointed counsel." 42 U.S.C. § 1997e(d)(3). Title 18 U.S.C. § 3006A provides that court-appointed counsel shall

> be compensated at a rate not exceeding $60 per hour for time expended in court or before a United States magistrate judge and $40 per hour for time reasonably expended out of court, unless the Judicial Conference determines that a higher rate of not in excess of $75 per hour is justified for a circuit or for particular districts within a circuit.

18 U.S.C. § 3006A(d)(1). At the time Webb's attorneys earned their postjudgment fees, the Judicial Conference had approved that a rate of $75 per hour was justified for all district courts except for the District of Rhode Island. This approved rate had not been implemented in the District of Idaho, however, due to a lack of congressional funding.

In rejecting Webb's argument that $75 was the appropriate baseline rate, the district court reasoned that the use of the word "established" in § 1997e(d)(3) when considered with the words "for payment of court-appointed counsel" evidences a "Congressional intent . . . to link

payment to PLRA counsel to the amount actually paid to CJA counsel in each district, not to what might be paid in the future." We disagree. The PLRA expressly provides for payment at the rate "established" under 18 U.S.C. § 3006A. 42 U.S.C. § 1997e(d)(3). The Judicial Conference determined that a rate of $75 per hour for the District of Idaho was justified. Section 1997e(d)(3) makes no distinction between the amount authorized by the Judicial Conference and the amount actually appropriated by Congress to compensate court-appointed counsel in criminal proceedings. We conclude, therefore, that the district court erred as a matter of law in construing 42 U.S.C. § 1997e(d)(3) and 18 U.S.C. § 3006A.

4.

Webb maintains that the district court abused its discretion by not adequately explaining why it substantially reduced his requested postjudgment attorney's fees on three matters. "The district court has a great deal of discretion in determining the reasonableness of the fee and, as a general rule, we defer to its determination, including its decision regarding the reasonableness of the hours claimed by the prevailing party." *Gates v. Deukmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). In exercising this discretion, however, the district court must "give at least some indication of how it arrived at the amount of compensable hours for which fees were awarded to allow for meaningful appellate review." ***Id.***

We agree with Webb that the district court did not adequately explain its substantial reduction in Webb's requested hours. With respect to the motion for contempt, the court awarded only 15 of the over 80 hours that Webb

requested because the contempt violation was "technical" and did not result "in any inmate's constitutional rights being violated." For work performed on the motion for discovery sanctions, the court awarded only 9 hours because Webb's request for 27.4 hours was "excessive." With respect to Webb's opposition to Ada County's objections to fees, the district court awarded only 21 hours, finding Webb's request for 32.9 hours "excessive especially in light of the fact that Plaintiffs did not prevail on all objections."[5] The terms "excessive" and "technical" are conclusions that are unsupported by any articulation of the basis for the court's substantial reduction of Webb's request. While we do not require the district court "to set forth an hour-by-hour analysis of the fee request," *Gates*, 987 F.2d at 1399, we cannot determine from the present record the basis for the court's determination that the hours claimed by Webb were excessive. Accordingly, we must order a remand for the development of a record that

---

[5] The difference between the amount of time Webb represented to the court that was expended in performing legal services and the amount of hours the court found were compensable is illustrated in the following chart:

Motion	Hours Requested	Hours Awarded	Percentage Awarded
Contempt	80.2	15	19%
Sanctions	27.4	9	33%
Opposing Ada County's Objections to Fees	36.4	21	58%
Total	144	45	31%

will permit us to review the question whether the district court properly exercised its discretion.

5.

A portion of the postjudgment monitoring fees that the district court awarded Webb related to work his attorneys performed before the PLRA's effective date of April 26, 1996. With respect to these pre-PLRA fees, the district court awarded an hourly rate of $125 per hour. Webb contends that the district court erred in applying a lower hourly rate to compensate him for the services performed by his attorneys on pre-PLRA postjudgment matters than the court applied for work on the merits in *Webb I.* The district court found that an hourly rate of $125 was justified because the postjudgment issues "have not been complex and the risks associated with such motions does not justify the hourly rate of $140 per hour" that Webb's attorneys received during the merits phase in *Webb I.* Prior to the enactment of the PLRA, we held that "[i]n determining a reasonable hourly rate, the district court should be guided by the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation." *Chalmers v. City of L.A.,* 796 F.2d 1205, 1210-11 (9th Cir. 1986).[6] The record reveals

[6] The method of calculating a reasonable hourly rate for attorney's fees, as discussed in *Chalmers,* is still applicable in non-prisoner suits. In law suits brought by prisoners, however, the method of calculating the hourly rate for attorney's fees is dictated by the PLRA. *See* 42 U.S.C. § 1997e(d)(3) ("No award of attorney's fees in an action ... [brought by a prisoner] shall be based on an hourly rate greater than 150 percent of the hourly rate established under section 3006A of Title 18, for payment of court-appointed counsel."). The PLRA only applies to

(Continued on following page)

that the district court considered evidence submitted by both parties in determining a reasonable hourly rate based on the relevant community for services performed before the effective date of the PLRA. The district court adequately explained its reasons and did not abuse its discretion in setting a different hourly rate for pre-PLRA postjudgment matters than it had applied in *Webb I*. *See Gates v. Rowland,* 39 F.3d 1439, 1451 (9th Cir. 1994) (a district court has discretion to determine whether same expertise that supports high rate for merits portion of case justifies using the same high rate for postjudgment phase).

6.

Finally, Webb argues that the district court erred in awarding Ada County interest on its overpayment of attorney's fees. The district court originally awarded Webb $9,495.00 in attorney's fees related to postjudgment matters. Ada County paid that amount in full on October 3, 1997. On remand from this court in *Webb II,* the district court recalculated Webb's award, and after applying 42 U.S.C. § 1997e(d), reduced the award to $6,036.25. It concluded that Ada County was entitled to an offset in the amount of $3,458.75. In addition, the court awarded Ada County 5.6% interest on that amount from October 3, 1997, the date Ada County satisfied the judgment. A

---

fees incurred for attorneys' services performed *after* the PLRA's effective date of April 26, 1996. *Martin,* 527 U.S. at 361-62. The fees Webb is challenging here relate to work his attorneys performed *before* April 26, 1996. Thus, we apply the pre-PLRA analysis found in *Chalmers* to review the district court's determination of a reasonable hourly rate to apply to these pre-PLRA fees.

district court's award of interest is reviewed for abuse of discretion. *AT & T v. United Computer Sys., Inc.*, 98 F.3d 1206, 1209 (9th Cir. 1996).

Webb argues that this award of interest was improper because 28 U.S.C. § 1961[7] only allows postjudgment interest to accrue from the date of entry of judgment. Webb's argument is without merit. Section 1961 does not apply under these circumstances. Ada County was not awarded interest after receiving a judgment. Rather, it was awarded interest because it promptly paid the total amount awarded by the court that was subsequently determined to have been erroneously calculated. *See Webb II*, 195 F.3d at 527-28. Therefore, since Ada County was deprived of the use of its money because of the miscalculation, the district court did not abuse its discretion in awarding interest to Ada County for the use of its money. *Cf. Air Separation, Inc. v. Underwriters at Lloyd's of London*, 45 F.3d 288, 290 (9th Cir. 1995) ("The purpose of awarding interest to a party recovering a money judgment is to compensate the wronged person for being deprived of the monetary value of the loss." (quotation and alterations omitted)).

---

[7] Section 1961 provides:

> Interest shall be allowed on any money judgment in a civil case recovered in a district court.... Such interest shall be calculated from the date of the entry of judgment....

28 U.S.C. § 1961(a).

Conclusion

We AFFIRM the district court's determination that Webb's postjudgment attorney's fees are compensable under the PLRA. We VACATE and REMAND those portions of the district court's judgment awarding attorney's fees with instructions that it use a baseline of $75 in calculating and awarding PLRA-authorized fees and set forth its reasons for reducing the compensable hours requested by Webb's counsel.

We grant Webb's request for attorney's fees on appeal pursuant to 42 U.S.C. §§ 1988 and 1997e(d)(1) because his attorneys' services were directly related to his appeal concerning attorney's fees under the PLRA. *See Hewitt v. Joyner,* 940 F.2d 1561, 1571 (9th Cir. 1991) ("'A prevailing [civil rights] plaintiff should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust.'" (alteration in original) (quoting *Hensley v. Eckerhart,* 461 U.S. 424, 429, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983))). The determination of the amount of the attorney's fees is transferred to the district court. *See* 9th Cir. R. 39-1.8; *Am. Jewish Cong. v. City of Beverly Hills,* 90 F.3d 379, 386 (9th Cir. 1996) (en banc).

AFFIRMED IN PART, VACATED IN PART AND REMANDED.

Each party shall bear its own costs on appeal.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ROBERT WEBB, TERRY STERKENBURG, TIMOTHY DRISCOLL, KENT HALL, FRANK WALLMULLER, RUSSELL HOWARD, ROBERT FRIEDLY, PEGGY KNOX, BILL LOHR, JESSE FULLER, individually, and for all other persons similarly situated, Plaintiffs, vs. ADA COUNTY, STATE OF IDAHO; VAUGHN KILLEEN, individually and in his capacity as Sheriff of Ada County; GARY GLENN, VERN BISTERFELT, and JOHN BASTIDA, Ada County Commissioners each sued in his or her individual and official capacities; RICHARD VERNON, individually and in his capacity as Director of the Idaho Department of Corrections; and their successors in office, Defendants.	Case No. CIV 91-0204 S EJL PARTIAL CONSENT DECREE AND ORDER (Filed April 14, 1995)

The Court, upon stipulation of the parties for the approval and entry of a Partial Consent Decree and Order (hereinafter Consent Decree), and having reviewed

the proposed Partial Consent Decree and Order being of the opinion that it is a fair and reasonable resolution of the issues in this action, hereby approves the Consent Decree and directs the entry thereof as follows:

PRELIMINARY STATEMENT

1. The Plaintiffs are pre-trial detainees and sentenced inmates who filed a Complaint seeking declaratory and injunctive relief for claimed unconstitutional jail conditions and policies pursuant to 42 USC section 1983 due to their incarceration in the Ada County jail (hereinafter ACJ), Boise, Idaho. The Defendants include Ada County, the County Commissioners and the Ada County Sheriff. The individual Defendants consent to this Consent Decree in their official capacities only and such consent shall be binding upon their successors in office.

2. The Court has previously certified a Plaintiff class composed of all current and future inmates confined in the ACJ. The parties agree that all present and future inmates confined in the entire ACJ are covered by this Consent Decree.

3. This Consent Decree does not affect the previous Partial Summary Judgment or the Interim Orders unless modified by the Court as necessary to effectuate the intent of the parties to this Partial Consent Decree and Order. Nothing in this paragraph or in paragraph six shall preclude either party from appealing or asking for a modification of the Court's Order on Partial Summary Judgment, and any interim Orders or the Court's final Orders in this action.

4. This Consent Decree is intended to partially resolve the pending issues which are scheduled to be heard by the Court. The parties specifically reserve the right to present any unresolved issues to the court at a future date, and reserve all rights regarding those issues.

5. The parties have, in this Consent Decree, agreed to partially resolve the Plaintiffs' claims in order to save time, expense and risk of litigation of trying these issues. The parties agreement is based upon a complete understanding of the law and constitutional obligations and their right to have the Court hear the evidence and issue legal relief, if appropriate.

6. The parties have an overriding interest in finality of the terms agreed to herein and expressly waive any claims or defenses they may have or could have raised to avoid litigation of the merits of the terms agreed to herein. The parties agree that the terms of the Consent Decree are constitutionally adequate. The parties agree to waive any right to appeal the terms of the Consent Decree.

7. The parties agree that the terms of the Consent Decree are workable, reasonable and can be implemented by Defendants.

8. The terms of this Consent Decree were voluntarily and mutually agreed upon by the parties as a compromise settlement of the dispute between the parties. Neither this settlement nor this Consent Decree constitute admissions by Defendants that any previous or existing condition, policy, procedure, act or omission of Ada County, the Ada County Sheriff, the Ada County Commissioners, their officials, employees, agents and

representatives was, or is, in any way improper, negligent, unconstitutional, or in violation of any right of Plaintiffs. Nothing in the settlement between the parties or in the provisions of this Consent Decree shall be deemed to constitute findings of fact or conclusions of law with respect to the claims or defenses of the parties to this action. This Consent Decree and the negotiations which culminated in this Consent Decree shall be considered settlement negotiations and a settlement pursuant to Rule 408, Federal Rules of Evidence.

9. Unless otherwise specified by the terms of this Consent Decree, said Consent Decree shall be effective and enforceable by the Court from the date it is approved by the Honorable Mikel H. Williams, Magistrate.

10. If a dispute arises concerning compliance with this Consent Decree, the complaining party shall notify counsel for Defendants in writing. The parties shall have fifteen days to resolve any such dispute and, at the end of said fifteen day period, if the parties are unable to reach agreement, the issue may be submitted to the Court.

11. This Consent Decree may be modified by the written agreement of the parties. In addition, either party may request that the court modify this Consent Decree if there is a significant and substantial change in circumstances which was not or could not have been anticipated by the parties. The moving party bears the burden of establishing the necessity for the modification. Any modification must be specifically tailored to the issue created by the change in circumstance.

12. Notice of this Consent Decree shall be given to the plaintiff class by posting notice of the Consent

Decree conspicuously in the ACJ and the Law Library and by reference in the inmate handbook. A copy shall be maintained in the Law Library.

13. This Consent Decree shall continue in full force and effect for a period of three years from and after the date of the final approval hereof by the District Court. The Court shall have continuing jurisdiction over this Consent Decree for that period of time unless the Court determines that a longer fixed period of time is necessary.

14. The Defendants recognize and anticipate that future compliance with an implementation of the Consent Decree may require the expenditure of funds.

15. This Consent Decree does not affect any claim for or objection to past, present or future attorney fees and costs.

I.

PHYSICAL FACILITIES

16. All plumbing, lighting, ventilation, heating and cooling equipment, including thermostats, furnishings and security hardware in the inmate living areas shall be kept in good working order. Any broken fixture, equipment, furnishings, or hardware which concern health, safety or security shall be promptly repaired or replaced as soon as possible unless there are circumstances beyond the control of the jail staff. The jail shall have a minimum of three full time staff dedicated to maintenance duties. A maintenance person(s) shall be designated to conduct a daily walk through of all physical facilities in the

cell areas and note any deficiencies or repairs which are necessary.

17. Staff, upon observing or learning of a breakdown or needed repair, shall make a maintenance request or log the problem as soon as possible, but in no event later than 24 hours from the discovery.

18. The Defendants agree to maintain a maintenance log system which allows the staff to properly maintain the jail by identifying fixtures, equipment, furnishings, or hardware requiring repair and documenting the action taken with regard to those repairs.

19. If emergencies arise, attempts to contact maintenance personnel will be the priority, however, if unable to locate maintenance personnel, private contractors may be requested to respond.

20. A licensed plumber, who may be a county employee, will inspect the facility and prepare an inspection report on the condition of all plumbing in the Ada County Jail. Plaintiffs' counsel may be present during the inspection and shall be provided a copy of the inspection report within 30 days of the signing of this Consent Decree. The licensed plumber will inspect and check all plumbing, including all toilets, showers, exhaust fans and sinks for malfunctions and leaks. Repairs, including replacing fixtures, shall be made within 30 days of inspection unless the nature of the repairs requires more time.

21. All surfaces, including showers, shall be maintained so that they are free from fungus, rust, mildew, soap scum, or any other substances that are

either adhering to or causing deterioration of the surface.

22. The jail will provide non-skid surfaces inside and outside all showers, which will be maintained in a sanitary condition and replaced as needed.

23. A sufficient number of shower and toilet facilities and areas shall be handicap accessible and shall comply with the Americans With Disabilities Act (ADA). Any renovation of the existing jail shall conform to the ADA.

24. If the toilet and sink facilities become inoperable, the jail staff will provide alternative facilities upon an inmate request until the repairs can be made. The jail will maintain an inventory of toilets for completing repairs.

25. The jail shall implement, within 60 days of the signing of this Consent Decree, a written preventative maintenance program that includes regularly scheduled inspections, by jail staff or other county employees, of lighting, heating, cooling, ventilation, electrical, plumbing, and fixtures for malfunctions, repairs, and replacement.

II.

HEATING, COOLING, AND VENTILATION SYSTEMS

26. Ventilation systems shall provide circulation of at least 10 cubic feet of fresh, filtered air per minute per inmate. The Ada County Jail's ventilation systems shall be balanced and tested.

27. Copies of all inspections conducted by public or private persons or entities shall be provided to plaintiffs' counsel, upon request.

28. Defendants agree to clean the duct system every two years and to inspect filters monthly and change when needed.

29. A private heating, cooling and ventilation expert(s) will inspect and test the functioning of the heating, cooling and ventilation systems to insure compliance with this Consent Decree. A report on the inspection will be provided to Plaintiffs' counsel within 60 days of the signing of this Consent Decree. All required repairs shall be made within 90 days of signing this Consent Decree. Major redesigns and system upgrades will be planned and budgeted through the normal Ada County purchasing procedure.

III.

LIGHTING AND ELECTRICAL SYSTEMS

30. Light levels in all inmate housing areas shall be between 18 and 20 lumens/foot candles measured at desk level. Night lighting levels shall provide adequate illumination for supervision, but shall not hinder restful sleep and will therefore be dimmed to approximately 5 lumens or less during lights out. Burned out light bulbs shall be replaced as soon as possible.

31. All electrical outlets shall be tested and any necessary repairs made. All electrical outlets shall have GFI protection if required by applicable electrical codes.

32. A licensed electrician, who may be a county employee, shall inspect and test the functioning of all

lights and electrical devices to insure compliance with this Consent Decree. Plaintiffs' counsel maybe present during the inspection and shall be provided a copy of the inspection report within 30 days of the signing of this Consent Decree. All required repairs shall be made within 60 days of the signing of this Consent Decree.

IV.

SANITATION

33. The jail administrator or designee shall conduct a weekly sanitation and maintenance inspection of all areas of the facility.

34. The jail shall have a written housekeeping plan for all areas of the physical plant which provides for daily housekeeping and maintenance by assigning specific duties to inmates and staff.

35. Defendant shall provide, on a daily basis, cleaning supplies and materials so that inmates may maintain sanitary conditions in the cells and sanitize their eating utensils.

36. If lice or crabs are found on an inmate, the infected inmate shall be immediately deloused and sprayed, and the inmates clothes and bedding shall be exchanged. If necessary, all other inmates in areas of the cell shall will be disinfected and clothing and bedding will be exchanged.

37. Defendants shall provide a program for the control of vermin and pests. This will include monthly insect fumigation of the jail. Jail staff shall report any presence of insect, vermin or pest infestation. A licensed pest control

professional shall be notified and appropriate fumigation measures shall be taken within a reasonable time.

38. Shower curtains shall be exchanged and laundered every month and replaced as necessary.

V.

INMATE HYGIENE, CLOTHING AND BEDDING

38. Inmates, prior to being placed in any housing area, shall be showered, deloused and issued a clean jump suit, towel and bedding, including mattress cover, blanket, mattress, pillow and pillow case. Inmates will be permitted to wear their personal underwear and socks if they comply with jail policy. The jail shall provide inmates with one clean pair of underwear if they have none. Female inmates shall be permitted to retain their personal bra and shall be provided with a clean bra if they have been housed longer than three days.

40. Laundry services shall be sufficient to allow required clothing, bedding and towel exchanges. A set schedule shall be implemented and a record shall be made of exchanges. The laundry shall be monitored to insure that the laundry is properly cleaned.

41. Inmate clothing shall be exchanged at least twice each week. At no time shall inmates be without clothing while it is being laundered.

42. Bedding shall be exchanged at least once a week, or more often, as necessary.

43. Blankets in use shall be exchanged every two weeks, or before reissue to another inmate.

44. Towels shall be exchanged at least twice each week.

45. Sandals, sneakers or other footwear shall be cleaned and sanitized before being reissued to another inmate.

46. All clothing, bedding, and towels issued to inmates shall be in sanitary and serviceable condition.

47. Defendants will maintain a sanitary facility and provide serviceable mattresses, pillows, mattress covers and pillow covers to inmates.

48. Inmate cups and utensils shall be exchanged and cleaned and sanitized on a weekly basis.

49. Inmates who are placed in the housing area shall, within 24 hours, be provided, without charge, sufficient soap, disposable razor, comb, tooth powder or toothpaste and tooth brush. The disposable razor shall be provided three times a week and shampoo will be available for purchase in the commissary. Hygienic supplies shall be made available on a daily basis. Hygienic supplies for female inmates shall be provided as needed.

50. Inmates will be given access to showers on a daily basis.

51. All inmates will be provided with seating at a table to eat their meals.

VI.

STAFF, TRAINING AND SUPERVISION

52. Defendant shall provide a sufficient number of jail staff to comply with their obligations set forth in the Consent Decree.

53. There shall, at all times, be a staff of qualified jail deputies, sufficient in number and properly trained in all jail procedures and operations, to provide for adequate security and safety, supervision, inside and outside exercise, legal access to court and counsel, delivery of medical care and transportation, and visitation (both legal and personal) for the inmates.

54. Defendants agree that they will have at least one female deputy on every shift to provide for the female inmate population as well as performing the other usual and customary duties.

55. Defendants will document discovered instances of inmate violence, including injuries, bodily assaults, sexual assaults, suicides and deaths.

56. All security personnel shall be trained in approved methods of applying the minimal amount of physical force necessary to control inmates. All personnel authorized to use any mechanical restraints, weapons, or chemical agents shall be thoroughly trained in the use of such.

57. Consistent with Equal Opportunity Employment Standards, jail personnel may supervise inmates of the opposite sex. The privacy needs of the inmates must be respected in the searching and supervising of inmates and jail staff must be carefully selected and trained in this

regard. Unless circumstances dictate otherwise, whenever jail staff of the opposite gender enter a living area, he or she shall first orally announce their presence and provide sufficient opportunity for inmates to protect their privacy. Unless circumstances dictate otherwise, whenever jail staff of the opposite gender enter the toilet and shower areas of the dormitory, he or she shall orally announce their presence and provide sufficient opportunity for inmates to protect their privacy.

VII.

CLASSIFICATION

58. A plan for classification of inmates shall be in written form and shall include entry level and revisions of custody level and required housing assignments. The written plan for inmate classification in the jail shall be [sic] compliance with state law and afford due process protection.

IIX.

DISCRIMINATION

59. Female and non-English speaking inmates shall be provided with equal treatment, conditions, parody [sic] and work assignments and reasonable efforts for access in all jail programs and activities.

60. The jail policies and procedures shall prohibit discrimination (i.e., sex, race, religion etc.) in any form, concerning treatment of inmates.

61. All jail inmate request forms and handbooks available to inmates shall be provided in English and Spanish.

62. The Defendants agree to make reasonable efforts to explain the jail policies and procedures, delivery of medical care, and communicate with jail staff regarding daily jail activities to non-English speaking inmates.

63. The Defendants will obtain a sufficient number of books for leisure reading by non-English speaking inmates.

64. Female inmates shall be provided equal and sufficient opportunities to participate in the Jail Trustee, Work Release and SILD programs.

65. The jail shall not confine persons who are sentenced to pay fines or for non-payment of fines because of their inability to pay and shall comply with the Order heretofore entered by the Honorable Judge Edward J. Lodge, United States District Judge for the District of Idaho.

IX.

COMMUNICATION AND MAIL

66. The facility shall have a written policy and procedure to govern inmate mail.

67. The defendants will follow State and Federal law with regard to reading or rejecting incoming and outgoing inmate mail.

68. Cash and money orders shall be removed from incoming mail and promptly credited to the inmates account.

69. The defendants will follow State and Federal law with regard to opening and inspecting incoming and outgoing inmate mail for contraband.

70. The defendants will follow State and Federal law with regard to the rejection of any publication, correspondence or any contents of a package or any other form of mail, and further with regard to the retention of illegal tangible items contained in any publication, correspondence or package.

71. Legal mail will be opened in the presence of the inmate. Legal mail is defined as writing between you and: a Judge, clerk, or other officer of the court; a lawyer who is a member of the State Bar Association, Idaho Legal Aid or the American Civil Liberties Union; an elected official; the Ada County Sheriff, the Security Services Division Director, the Department Legal Advisor, or the jail commander.

72. The defendants will follow State and Federal law with regard to incoming/outgoing correspondence from/to attorneys, courts, government officials or offices.

73. Inmates may have photographs of immediate family (husband, wife, mother, father, son, daughter, brother, sister, or other live-ins) in their cells. Sheriff reserves the right to manage the location and placement of photographs. Polaroid photographs are not acceptable.

74. Inmates are entitled to receive daily newspapers from the publishers and said newspapers will be collected and disposed of daily.

75. The defendants will follow State and Federal law with regard to providing indigent inmates with writing supplies and postage for letters to their attorneys, the courts, government officials and jail staff.

76. Indigent inmates shall be provided with writing supplies and postage for a minimum of three (3) one ounce non legal letters per week to maintain family and community ties. Incoming mail shall be delivered to inmates within 24 hours, excluding weekends and holidays. Out going mail shall be delivered to the postal service daily, excluding weekends and holidays.

X.

INMATE DISCIPLINE AND DUE PROCESS PROCEDURE

77. All policies and procedures for the disciplining and segregation of inmates shall be written and strictly adhered to by jail staff. The policies and procedures for discipline and segregation shall provide for procedural protection as set forth by the United States Supreme Court, the Ninth Circuit Court of Appeals, the United States District Court for the District of Idaho and the Idaho Supreme Court. The policies and procedures to be followed by the inmates and the disciplinary hearing procedures will be outlined in the inmate handbook.

78. The policy of the ACJ shall be that personnel are required to use the least restrictive means available to control and discipline inmates, and physical force shall always be the last alternative.

79. In the event of an incident constituting an immediate threat to the welfare of an inmate or to the security of the jail, jail personnel may immediately segregate the inmate prior to the provision of due process procedures. A written report of such action with the reasons which require pre-hearing detention shall be submitted within 24 hours and reviewed by the jail Supervisor to

determine if segregation is necessary prior to hearing. The pre-hearing detention shall be reviewed every 24 hours until the hearing and decision have been completed. These reports shall be maintained and made available for inspection for Plaintiffs' counsel.

80. When a violation of the rules or the reason for the segregation do not involve an immediate threat to safety or security, inmates may not be disciplined or placed or kept in segregation unless the jail has complied with the procedural protection set forth by the United States Supreme Court, the Ninth Circuit Court of Appeals, the United State District Court for the District of Idaho and the Idaho Supreme Court.

DATED This 3rd day of April, 1995.

BOWEN, BRASSEY,
GARDNER, WETHERELL &
CRAWFORD

By: /s/ Andrew C. Brassey
ANDREW C. BRASSEY
Attorneys for Defendants

ADA COUNTY COMMISSIONERS

DATED This 3 day of April, 1995.

By: /s/ Vernon L. Bisterfeldt
VERN BISTERFELDT

DATED This 3 day of April, 1995.

By: /s/ Roger Simmons
ROGER SIMMONS

DATED This 6th day of April, 1995.

By: /s/ Gary Glenn
GARY GLENN

DATED This 3rd day of April, 1995.

By: /s/ Vaughn Killeen
ADA COUNTY SHERIFF

DATED This 3rd day of April, 1995.

IDAHO LEGAL AID
SERVICES, INC.

By: /s/ Howard Belodoff
HOWARD BELODOFF
Attorneys for Plaintiffs

DATED This 4th day of April, 1995.

By: /s/ Lea Cooper
LEA COOPER
Attorneys for Plaintiffs

IT IS SO ORDERED.

DATED This 14 day of April, 1995.

By: /s/ Mikel H. Williams
MIKEL H. WILLIAMS
U.S. MAGISTRATE JUDGE

DATED This 14TH day of April, 1995.

By: /s/ Edward J. Lodge
EDWARD J. LODGE
U.S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

ROBERT WEBB, TERRY STERKENBURG, TIMOTHY DRISCOLL, KENT HALL, FRANK WALLMULLER, RUSSELL HOWARD, ROBERT FRIEDLY, PEGGY KNOX, BILL LOHR, JESSE FULLER, individually and for all other persons similarly situated,

Plaintiffs,

vs.

ADA COUNTY, STATE OF IDAHO; VAUGHN KILLEEN, individually and in his capacity as Sheriff of Ada County; GARY GLENN, VERN BISTERFELT and JOHN BASTIDA, Ada County Commissioners each sued in his or her individually and official capacities; RICHARD VERNON, individually and in his capacity as Director of the Idaho Department of Corrections; and their successors in office,

Defendants.

Case No. Cv 91-0204-S-EJL

ORDER

(Filed Sep. 29, 1997)

This matter is currently on appeal to the Ninth Circuit. However, pending before the Court in the above-entitled matter are a number of post-judgment motions filed by the Plaintiffs. The Court will address three of the motions and refer the motions related to compliance under the Partial Consent Decree to U.S. Magistrate Judge

Mikel H. Williams for the issuance of a Report and Recommendation.

Having fully reviewed the record, the Court finds that the facts and legal arguments are adequately presented in the briefs and record. Accordingly, in the interest of avoiding further delay, and because the Court conclusively finds that the decisional process would not be significantly aided by oral argument, these matters shall be decided on the record before this Court without oral argument.

MOTION TO ALTER OR AMEND

Plaintiffs seek to have the Court alter or amend its judgment in two areas: 1) to allow the Plaintiffs to respond to the sufficiency of the jail library materials as referenced in Defendants' October 30, 1997 letter to the Court and 2) to claim attorneys fees related to the motion for contempt which the Court indicated Plaintiffs were entitled to in the Order Adopting the Report and Recommendation. By separate order, the Court allowed Plaintiffs to file their specific objections to the library inventory (filed as Docket No. 432) and has received two letters from counsel in this case regarding the library materials which the Court will have docketed.[1]

In the Report and Recommendation issued by Judge Williams and adopted by this Court, Judge Williams sets

[1] The clerk of the court is instructed to file as Supplemental Notices Regarding Library Materials the January 24, 1997 letter from Mr. Brassey and the January 10, 1997 letter from Mr. Belodoff which were received by the Court.

forth on pages 121-129 that the following materials should be available in the county jail library:

> Idaho Reports; Supreme Court Reporter; Pacific Digest; Federal Digest (4th); Shepards (Idaho Citations); Corpus Juris Secundum; Idaho Code; Federal Code titles 18, 28 and 42 (annotated); state and federal jury instructions; state and federal local rules; Criminal Practice Series (or similar to West Publishing's series); Nutshells on subjects such as criminal procedure, legal research, prisoners' rights and constitutional law; updated Federal Rules of Civil and Criminal Procedure; Federal Civil Rule Handbook (optional recommendation); Federal Forms; *Post Conviction Remedies*; *Rights of Prisoners*; and a law dictionary.

The Court notes that at the time Judge Williams made his recommendations for the library, he was relying on the Supreme Court case of *Bounds v. Smith*, 430 U.S. 817 (1977). Since then the Supreme Court has issued its opinion in *Lewis v. Casey*, ___ U.S. ___, 116 S.Ct. 2174 (1996) which redefined prisoners' rights of access to the courts and ability to challenge inadequate law libraries. In light of the language in *Lewis v. Casey*, the Court is inclined to limit the required library materials that the Ada County Jail must maintain since there has been no actual injury established related to the law library.[2]

---

[2] The Court notes that based upon *Lewis v. Casey*, the Arizona Department of Corrections will close state prison libraries and provide only 16 items as legal resources to support prisoners' access to the courts. While it appears to the Court that the Arizona approach is unduly restrictive, the Court finds that the publications recommended

(Continued on following page)

The Court has reviewed the October 30, 1996 inventory filed by the Defendants as well as the January 24, 1997 letter regarding supplementation of certain materials and obtaining missing volumes. In reviewing the inventory, the Court notes the following deficiencies or modifications to the recommended publications in the report and recommendation:

1. Standard jury instructions for state and federal courts – Defendants are ordered to order these materials and supplement such instructions in the future.

2. Federal local rules – these will be provided by the Court to Defendants to place in the library. (Supplementation is the responsibility of Defendants.)

3. Nutshells on corrections and prisoners' rights – the Court deems these are not required based on other materials on the same subject that currently exist or will be ordered by the Court.

4. Updated Federal Sentencing Law and Practice – The Court does agree with the Plaintiffs that a recent publication regarding the Federal Sentencing Guidelines should be available as many federal defendants are housed at the Ada County Jail pending sentencing. The Court will direct the Defendants to either properly supplement the Criminal Practice Series volume on Federal Sentencing Law and Practice or to purchase the "Federal Sentencing Guidelines Handbook" published by Lawyers Cooperative Publishing which is updated annually.

---

in this Order will provide a constitutionally adequate law library for a county jail.

5. West' Criminal Practice Series (on topics other than federal sentencing) should be properly supplemented by the Defendants and such supplementation is not included in the January 24, 1997 letter.

6. Supplementation and Missing Volumes – The Court agrees with the Plaintiffs that missing volumes should be purchased and the Court ordered materials should be properly supplemented. It appears from the January 24, 1997 letter to the Court that Defendants are taking steps to replace missing volumes and to properly supplement required materials. The Court will require verification that the supplementation and replacement of missing volumes has been completed in all areas noted in the January 24, 1997 letter (and attachments) and this Order or state why such supplementation has not taken place. This notice will be filed with the Court on or before October 30, 1997. No responses to such notice are to be filed by the parties. The Court will review the notice and determine if any additional action regarding the library inventory needs to be taken in light of the instructions to the Defendants in this Order.

7. As to the United States Code, the Court believes that as to title 42, the jail is not required to maintain the entire contents of title 42. Instead, the jail need only maintain the required volumes that include sections 1981 through 1988 of title 42.

8. The Pacific Reporter (weekly) is not a mandatory publication to be maintained by the library. Additionally, the Idaho Cases in the weekly reports for at least 1989 through 1994 would be included in the cases in the Idaho Reports and a synopsis of other states' cases would be included in Pacific Digests and their pocket parts. The Court does not know how expensive this weekly service is and leaves it to the

discretion of the Defendants to determine if this publication should be continued.

9. The Court does not require the Federal Supplements to be maintained, however, if such are being received at no cost and the library has space for such then the Federal Supplements should be continued.

10. The Federal Civil Rule Handbook, optionally recommended by Judge Williams, is not required by the Court and it is in the discretion of the Defendants on whether or not to purchase this publication.

As to the Plaintiffs' requests for additional materials, the Court makes the following findings. As stated by Judge Williams in the Report and Recommendation, this is a county jail and not a state prison. Eighty percent of the inmates are housed at the county jail for ten days or less. Therefore, the library need not be as extensive as a state prison library were [sic] the inmates are in custody for long periods of time. The goal should be an effective library at a minimal cost. The Court cannot believe that the cost of maintaining the Federal Reporters is justified in a county jail in light of the fact that the Federal Digest is available. Furthermore, the Defendants have indicated in their January 24, 1997 letter that the librarian is attempting to purchase a publication which would summarize recent Ninth Circuit decisions. While not providing a complete set of federal law to the inmates, such a publication when combined with the Federal Digest would allow the inmates to be aware of new case law. The Court leaves the decision of whether or not to purchase such a publication to the discretion of the Defendants.

The additional volumes of Federal Practice related to evidence, civil procedure and federal courts are not deemed necessary based on the other materials regarding

the same subjects which are available in other library materials.

The Court finds that the requested publications entitled *"A Jailhouse Lawyer's Manual"* (Fourth Edition) would be a helpful publication for inmates and such publication has a minimal cost. Therefore, the Defendants are instructed to order such publication. The Court will provide a copy of the District of Idaho's Pro Se Handbook to include in the jail library.

The Court reminds the parties that the Magistrate Judge's recommendations do not limit what the Defendants may maintain in the library. The recommendations provide a floor of minimum requirements, but the Defendants are free to include additional materials in the library that they believe are relevant to the inmates' needs. The "filler" legal materials should be removed as recommended by Judge Williams. The Court declines to order Plaintiffs' request of annual verification that the materials being supplemented. The requirements of the Court are clearly stated in the rulings in this case and to the extent, the Defendants are not complying, Plaintiffs are free to file a separate action related to the Defendant's responsibility of maintaining an adequate county jail library.

The issue of attorneys fees regarding the motion for contempt will be addressed below. In light of the above rulings, the motion to alter or amend judgment is granted in part and denied in part."

MOTION FOR POST-JUDGMENT ATTORNEYS FEES

The Plaintiffs request additional post-judgment attorneys fees for the following areas: motion to compel, motion for sanctions, Dr. Doke motion, briefing regarding the PLRA and objections by Defendants, compliance, post-judgment matters and request for attorneys fees. The Court has reviewed the objections to attorneys fees filed by Defendants and Plaintiffs' reply briefing. The amount of attorneys fees to be awarded under § 1988 of the Civil Rights Act must be determined by the facts of each case. *Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct. 1933 (1983). In determining the amount of fees the court is entitled to consider the results obtained by the plaintiff and if the plaintiff is only partially successful, the hours may be reduced to avoid an excessive award. *Id.*

As to the hourly rate for attorney fees, the Court finds that the issues related to the current request for attorney fees have not been complex and the risks associated with such motions does not justify the hourly rate of $140 per hour for Mr. Belodoff (which was reluctantly adopted by this Court in its Order Adopting Report and Recommendation). The Court finds an hourly rate of $125 more accurately reflects the going market rate for the type of legal issues presented to the Court in the current request for additional attorney fees.

With regards to the motion to compel, the Court finds that the requested hours by the Plaintiffs are excessive (total of 80.20 hours requested) based upon the result achieved ($250 contempt award against the sheriff) and the fact that the violation was a technical violation and not a violation that resulted in any inmate's constitutional rights being violated. The Court finds that reasonable

attorneys fees regarding the motion to compel and in - court time for such motion would be 10 hours for Mr. Belodoff at $125 per hour and 5 hours for Ms. Cooper at $100 per hour for a total of $1,750.00.

With regards to the motion for sanctions, the Court again finds that the hours requested for this motion are excessive. The Court did grant sanctions in the amount of $1,000 but the Plaintiffs are requesting 27.4 hours to be reimbursed. The Court finds that reasonable attorneys fees related to the motion for sanctions regarding discovery would be 2 hours for Mr. Belodoff at $125 per hour and 7 hours for Ms. Cooper at $100 for a total of $950.00.

With regards to the 11.1 hours requested regarding Dr. Doke motion, the Court finds that the Plaintiffs did not prevail on this issue and are not entitled to any attorneys fees related to such.

With regards to the 32.9 hours for responding to Defendant's Objections, the Court finds that the hours are again excessive especially in light of the fact that Plaintiffs did not prevail on all objections. The Court will award reasonable attorneys fees in the amount of 20 hours for Mr. Belodoff at $125 per hour and 1 hour for Ms. Cooper at $100 per hour for a total of $2,600.

With regards to requested attorneys fees for briefing regarding the PLRA, the Court acknowledges that it was the Court that requested supplemental briefing from the parties. The Court determined that the PLRA was not applicable regarding capping the hourly rate for attorneys fees, so it is possible to argue that Plaintiffs were the prevailing party on this issue. However, the issue was limited that the Court requested briefing on and the Court

finds that reasonable attorneys fees would be 20 hours at $125 for Mr. Belodoff for a total of $2,500.

With regards to Post-Judgment time and Attorneys Fees request for a total of 9 hours the Court finds that the Plaintiffs are entitled to this time in full. Mr. Belodoff is awarded $850 (6.8 hours at $125 per hour) and Ms. Cooper is awarded $220 (2.2 at $100 per hour) for a total of $1,070.

In order to avoid an additional motion regarding attorneys fees on the library objections which were not filed with the Court until after the petition for further attorneys fees was filed, the Court finds that certain objections raised by the Plaintiffs to the library materials were valid and that some attorneys fees for this legal work should be awarded. Accordingly, the Court will award 5 hours of attorneys fees at $125 for a total of $625 to Mr. Belodoff related to the library objections. No further award for attorneys fees regarding this issue will be entertained by the Court.

Finally, as to attorneys fees relating to compliance, this issue will be addressed by Judge Williams when he issues his report and recommendation on the compliance motions.

MOTION TO ENTERTAIN A MOTION FOR RELIEF FROM JUDGMENT

Plaintiffs seek leave from the Court to entertain a motion to address the jail's alleged use of cots. The Court believes that the alleged facts are new and should not be addressed in the present case as such were not at issue when the Court issued its Order Adopting the Report and

Recommendation and such Order is on appeal with the Ninth Circuit. Additionally, the Plaintiffs are not prohibited from filing any claim related to the use of cots at the jail in a separate action. The motion is denied.

ORDER

Being fully advised in the premises, the Court hereby orders that:

1) Plaintiffs' Motion to Alter or Amend Judgment (Docket No. 423) is **GRANTED IN PART AND DENIED IN PART** as explained in this Order. Defendants are to comply with the library inventory requirements noted in this Order and to provide notice of compliance and an updated library inventory and any necessary explanation of non-compliance on or before October 30, 1997.

2) Plaintiffs' Motion for Post-Judgment Attorneys Fees (Docket No. 426) is **GRANTED IN PART AND DENIED IN PART**. The attorneys fees requested are reduced as indicated in this Order for a total award to Plaintiffs in the amount of $9,495.00 ($7,975.00 for Mr. Belodoff and $1,520.00 for Ms. Cooper). Any attorneys fees awarded related to compliance with the Partial Consent Decree shall be addressed by Judge Williams.

3) Plaintiffs' Motion to Entertain a Motion for Relief of Judgment (Docket No. 453) is **DENIED**.

4) Because the case is currently on appeal, the Court is going to prohibit additional motions from being filed with the District Court, except for any notice of appeal regarding the Judgment on Post-Judgment Attorney Fees, until the motions regarding compliance with the Partial Consent Decree are ruled upon by Judge Williams.

5) All remaining post-judgment motions shall be referred to the Honorable Mikel H. Williams.

6) Clerk of the Court is instructed to file the letters from counsel regarding library materials as noted in footnote 1.

7) Clerk of the Court is instructed to provide to Defendant's counsel along with this Order a hardcopy of the District of Idaho's newly revised Civil and Criminal Local Rules as well as the District's Pro Se Handbook. Defendants' counsel is to provide these materials to the jail librarian in a timely manner and such shall be included in the inventory submitted to the Court at the end of October.

Dated this 26th day of September, 1997.

/s/ Edward J. Lodge
EDWARD J. LODGE
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

ROBERT WEBB, et al., Plaintiffs, vs. ADA COUNTY, et al, Defendants.	CASE NO: CV91-204-S-EJL **ORDER ON SUPPLEMENT REPORT AND RECOMMENDATION** (Filed March 24, 2000)

Pending before the Court in the above-entitled matter is the Ninth Circuit's Mandate (Docket No. 540) dismissing in part, affirming in part and remanding in part this court's Judgment entered on September 29, 1997 (Docket No. 489) relating to post-judgment attorneys fees. *See*, *Webb v. Ada County*, 195 F.3d 524 (9th Cir. 1999). Since the issuance of the Judgment, there have been additional legal matters and additional motions for attorneys fees were filed by the Plaintiffs. This Court referred the request for compliance attorneys fees contained in the motion docketed as No. 426 and attorneys fees motions filed subsequent to the September 29, 1997 Judgment (Docket Nos. 440 and 519) to Chief United States Magistrate Mikel H. Williams. On December 23, 1999, Judge Williams issued his Order, Report and Recommendation in this matter. Judge Williams issued a Supplemental Report and Recommendation on February 4, 2000, after it was determined that certain attorneys fees requests had not been addressed in December 23, 1999 Order, Report and Recommendation. Pursuant to 28 U.S.C. § 636(b)(1), the parties had ten (10) days in which to file written objections to the proposed findings and report and recommendation. Both the Plaintiffs and the Defendants filed objections to the report and recommendations. The Court will now

address the remand, the report and recommendations, and Plaintiff's new motion for fees related to the reports and recommendations in an effort to bring closure to this litigation.

Ninth Circuit Remand

In this Court's Order dated September 29, 1997, the Court determined that the Plaintiffs were entitled to certain reasonable attorneys fees and that the fees caps of the Prison Reform Litigation Act (PLRA) did not apply. On appeal, the Ninth Circuit determined the Court had erred in allowing an hourly rate of $125 instead of the PLRA cap rate of 150% of 18 U.S.C. § 3006A. The Ninth Circuit was applying the recent Supreme Court ruling that held attorneys fees awarded for post-judgment activities that occur after the effective date of the PLRA (April 26, 1996) are to be calculated using the PLRA cap rates. *See, Martin v. Hadix*, 527 U.S. 343, 119 S. Ct. 1998 (1999). The Ninth Circuit remanded the case for proceedings consistent with *Martin*. The Ninth Circuit also suggested in footnote 2 that this Court revisit its fees on fees analysis consistent with *Schwarz v. Secretary of Health & Human Services*, 73 F.3d 895 (1995).

The Ninth Circuit found the number of hours determined to be reasonable for the legal work and success achieved by the Plaintiffs were within this Court's discretion. However, the Ninth Circuit found the hourly rate was not properly calculated. Therefore, the Court adopts by reference the number of hours previously determined to be reasonable for the following legal issues:

1) Contempt – 10 hours for Mr. Belodoff and 5 hours for Ms. Cooper. Based upon the itemizations of attorneys

fees, the Court will allow 5 of the 10 hours for Mr. Belodoff to be in-court hours since this is the amount of time listed to attend the hearing on April 17, 1996. The Court did not find an itemization for Ms. Cooper attending the hearing, so all of her hours are considered to be out-of-court time.

2) Sanctions – 2 hours for Mr. Belodoff and 7 hours for Ms. Cooper. All time out-of-court as any court time would be included in the previous hearing time.

3) Compliance – will be addressed in the report and recommendations of Judge Williams. The Ninth Circuit did not decide whether attorneys fees for consent decree monitoring were proper in this case and dismissed the Plaintiffs' appeal on this matter. *See, Webb v. Ada County*, 195 F.3d 524 (9th Cir. 1999).

4) Dr. Doke – 0 hours as Plaintiffs did not prevail on this issue.

5) Reply to Defendants Objection – 20 hours for Mr. Belodoff and 1 hour for Ms. Cooper. all time was out-of-court time as no hearing was held on the objections.

6) Opposition to PLRA – 20 hours to Mr. Belodoff. All time was out-of-court time as no hearing was held on the PLRA arguments.

As to the Plaintiffs request for fees-on-fees, the Court is compelled by the Ninth Circuit opinion to revisit the total hours allowed. The Court finds that the allowed hours should be reduced from 9 to 6.5 hours.

7) Post Judgment Time and Petition for Attorneys Fees – 5.0 hours allowed for Mr. Belodoff and 1.5 hours allowed for Ms. Cooper. All time was out-of-court time. In light of the footnote in the Ninth Circuit opinion, the

number of hours is reduced from the original 9.0 hours awarded to 6.5 hours based upon *Schwarz v. Secretary of Health & Human Services*, 73 F.3d 895 (1995) (district court has discretion to reduce fees-on-fees to same extent applicants ultimately fail to prevail on fees request itself). In the present case, the Plaintiffs requested 157.8 hours (177.8 – 20 hours for compliance addressed in report and recommendations and not counting library compliance) for Mr. Belodoff and 39.2 hours (49.9 – 10.7 hours for compliance addressed in report and recommendations) for Ms. Cooper. The total hours awarded regarding this motion for fees are 57 hours for Mr. Belodoff and 14.5 for Ms. Cooper. The Court's reductions in the fees-on-fees requested hours is related to the success of the Plaintiffs on their motion for attorneys fees. While the reduction for fee-on-fees hours is substantially less than the reductions to the other areas of requested fees in the motion, the Court finds that 6.5 hours is reasonable amount of time for post-judgment time and the fees-on-fees request.

8) Library compliance – The Court previously awarded 5.0 hours for Mr. Belodoff related to library compliance issues. In the subsequent motion the Plaintiffs requested 14.7 hours for library compliance. In the reports and recommendations, Judge Williams does not recommend allowing any further recovery for library compliance based upon this Court's statement that no further request would be entertained. Since the Court made its determination of a reasonable amount of time to be spent on the issue before counsel had calculated their time, the Court finds it would be fair to revisit the number of hours allowed to determine if 5 hours is reasonable. In reviewing the submitted hours, the Court finds that 7 hours is a reasonable amount of time since the library issues were

not complex and the Plaintiffs did not prevail on all of their claims or requests regarding the law library. All time would be out-of-court time as no hearings were held on the library compliance issues.

Total hours allowed (except for compliance) is 64 hours for Mr. Belodoff and 14.5 hours for Ms. Cooper. The Court must now apply the PLRA cap rates for attorney services after April 26, 1996. As discussed in more detail below in the Court's rulings on the objections, the Court is going to apply an in-court rate of $65 times 150% for an hourly rate of $97.50 and an out-of-court rate of $45 times 150% for an hourly rate of $67.50. In applying these rates, Mr. Belodoff would be entitled to $487.50 for 5 hours in-court time and $3,982.50 for 59 hours of out-of-court time. Ms. Cooper would be entitled to $978.75 for 14.5 hours of out-of-court time. Therefore, the total fees recalculated per the remand would be $5,448.75. The previous judgment of September 29, 1997, awarding attorney fees of $9.495.00 will be amended to award $5,448.75.

Report and Recommendations

Pursuant to 28 U.S.C. § 636(b)(1), a district court judge may reconsider any pretrial matter where it has been shown that the magistrate's order is clearly erroneous or contrary to law. Furthermore, a district court judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. The Court may accept, reject or modify, in whole or in part, the findings and recommendations made by the magistrate judge.

Plaintiffs do not object to the number of hours determined to be reasonable by the magistrate judge, but do

challenge the calculation of the capped rates under the PLRA. The Plaintiffs claim the cap should be based on the $75 per hour cited in § 3006A and not on the actual approved rates which are currently $65 for in-court time and $45 for out-of-court time. Plaintiffs also request interest on the attorneys fees. The Defendant objects to any award of compliance attorneys fees as such are in violation of the PLRA since the fees are not directly related to proving a constitutional violation. Based on these objections, this Court must conduct a de novo review of the record. It is a statutory and constitutional obligation of the district court "to arrive at its own independent conclusion about those portions of the magistrate's report to which objections are made." *U.S. v. Ramsing*, 874 F.2d 614, 618 (9th Cir. 1989).

1. Hourly Rate Objection.

Pursuant to the PLRA, no award of attorneys fees in a prisoner civil rights actions "shall be based upon an hourly rate greater than 150 percent of the hourly rate established under 18 U.S.C. 3006A. 42 U.S.C. § 1997e(d)(3). Title 18 U.S.C. 3006A(d) provides in part:

> Any attorney appointed pursuant to this section . . . shall, at the conclusion of the representation for any segment thereof, be compensated at a rate not exceeding $60 per hour for the time expended in court . . . and $40 per hour for time reasonably expended out of court, unless the Judicial Conference determines that a higher rate of not in excess of $75 is justified for a circuit or for particular districts within a circuit. . . .

Effective January 1, 1996, the Judicial Conference approved a five dollar increase in the hourly rates to $65 for

in-court time and $45 for out-of-court time. While the Judicial Conference has approved an hourly rate of $75 for in and out of court time for all federal judicial districts except Rhode Island, the rate ahs not been funded in the majority of districts. Specifically, the $75 amount has not been implemented in Idaho.

The appropriate hourly rate based upon the statutory language has not been determined by the Ninth Circuit. Footnote 2 of *Madrid v. Gomez*, 190 F.3d 990 (9th Cir. 1999) appears to support the magistrate's conclusion that the Ninth Circuit has recognized that the rate would be based on $65 and $45 if the Judicial Conference had not approved and funded the $75 rate for the particular district. In *Madrid*, the Ninth Circuit stated that the Judicial Conference had approved and Congress was funding the $75 per hour rate for Northern California and so that rate was applied. At the time the Judicial conference approved the $75 rate for Northern California and some other districts, the Judicial Conference only authorized payment at $65 and $45 rates for the District of Idaho. While it is true that the Judicial Conference recommended a rate of $75 for all districts (except Rhode Island), such recommendation has not been funded by Congress and the $65 and $45 rates remain in effect for Criminal Justice Act (CJA) work in the District of Idaho.

The Court has reviewed the decision cited by Plaintiffs in *Illick v. Miller*, ___ F. Supp. ___, No. CVN 94-0314 DWH, 1999 WL 781654. The Nevada court determined the approved (but not fundèd) rate of $75 rate should be applied as the base rate to provide for a final rate of $112.50. However, the court noted that the issue may well be moot as the attorney seeking fees practiced in Washington, D.C., which is one of districts in which the $75 rate is

paid to CJA attorneys. The court focused on the word "established" in § 803(d)(3) of the PLRA to conclude the recommended and approved, but unfunded rate should apply. This Court respectfully disagrees with the *Illick* court. The rates "established" by the Judicial Conference for Idaho CJA attorneys are $65 and $45.

The Court also adopts the more detailed analysis of Judge Williams on this issue. The Court agrees with the only circuit court to specifically address the issue. *See*, *Hernandez v. Kalinowski*, 146 F.3d 196, 201 (3rd Cir. 1998) (the applicable rate for PLRA work should be based upon the actual hourly rates paid in the District for CJA work). The Court finds that it would be unfair to require a defendant to pay legal fees at a higher rate based upon rate that is not in actual use by the District of Idaho. Further, to allow a recommended rate that has never been funded by Congress to be used as the base rate seems to be in contravention to Congressional intent in passing the PLRA. Congress was well aware of the appropriated hourly rate for CJA attorneys when it passed the PLRA. In making this funding, the Court acknowledges that the CJA hourly rates used by this district are low in comparison to the hourly rate approved for pre-PLRA work in this case of $140 per hour or to private practice criminal defense rates. However, the district has ample attorneys that accept criminal cases at the CJA rates of $65 and $45 and it is reasonable to believe there are ample attorneys that would take on civil prisoner litigation for a fee of 150% of the current CJA rates in the District of Idaho. Plaintiffs' objection to the base rate for hourly is overruled.

2. Request for Interest on Fees.

At the end of their objections, Plaintiffs request interest on their attorneys fees award since it has taken awhile for the award to be determined. Defendants properly objected to the request for interest. The law is well-settled that interest is not awardable until the amount is secured with a judgment. *Friend v. Kolodzieczak*, 65 F.3d 1514, 1519 (9th Cir. 1995). The Plaintiffs' request is denied as far as the compliance fees addressed in the report and recommendations. The Court finds that Plaintiffs should be entitled to post-judgment interest calculated at the rate stated in the Judgment dated September 27, 1997 (Docket No. 489) on the reduced attorneys fees related to the remand by the Ninth Circuit. The judgment in favor of the Plaintiffs for attorneys fees was not overturned by the Ninth Circuit, only the rate at which hours were compensated.

3. Fees Related to Constitutional Violation.

Defendants object that the fees requested are not directly and reasonably incurred in proving a violation of prisoners' rights as required by § 803(d)(1) of the PLRA. Defendants contend Plaintiffs' compliance efforts were not tied to any constitutional violation. Defendants maintain that Plaintiffs failed to prove a constitutional violation and that the Consent Decree specifically states that Defendant does not admit conditions created a violation of rights. The issue was not addressed by the Ninth Circuit in the appeal

by Plaintiffs.[1] This Court has previously ruled that Plaintiffs did establish limited violations of Plaintiffs' rights regardless of the language in the Consent Decree. *See*, Order dated March 11, 1998 (Docket No. 493). The Court will not revisit this argument and adopts by reference the analysis of Judge Williams in the report and recommendations regarding this argument. Defendants' objection is overruled.

4. Defendants' Other Objections.

Defendants renewed its objections as to the overall reasonableness of the requested hours by the Plaintiffs. The Court adopts the magistrate judge's analysis and findings regarding the reasonableness of the hours requested and overrules Defendants objections based upon billing for clerical tasks, billing in insufficient detail and billing for time with Defendants' former attorney.

Motion for Attorney Fees Relating to Report and Recommendations

Plaintiffs move the Court to award attorneys fees and costs that Plaintiff's counsel incurred related to the reports and recommendations. This Petition was filed On January 25, 2000, and the docket does not reflect a response to the petition by Defendant. In the Petition, Plaintiffs request 10.4 hours of time and $10.49 in costs.

---

[1] "We do not have jurisdiction over fees for consent decree monitoring. The district court declined to rule on whether attorney's fees were warranted because the matter was still pending before the magistrate judge." *Webb v. Ada County*, 195 F.3d 524 (9th Cir. 1999).

The Court finds the requested hours excessive in that Plaintiffs were mainly restating arguments previously made to the magistrate judge. The Court finds that 6 hours is reasonable and all hours would be at the out-of-court rate. Effective January 1, 2000, the actual CJA hourly rates were increased to $70 (in-court) and $50 (out-of-court). Because all but .5 hours being requested were incurred in 2000, the Court will apply the $50 out-of-court rate to these hours. Six hours times ($50 times 150%) equals a total fee award of $450.00 The costs of $10.49 are approved as reasonable.

Order

Acting in part on the recommendations of Chief Magistrate Judge Williams, based on the foregoing, and this Court being fully advised in the premises,

IT IS HEREBY ORDERED:

1) The Court's Judgment of September 29, 1997 as to attorneys fees is amended. The Plaintiffs' Motion for Attorneys Fees (Docket No. 426) is **GRANTED IN PART AND DENIED IN PART**. The attorneys fees requested are reduced as indicated in this Order for a total award to Plaintiffs in the amount of $5,448.75, but interest on this amount shall accrue from September 29, 1997 at a rate of 5.6%.

2. Plaintiffs' Supplemental Post Judgment Petition for Attorneys Fees (Docket No. 440) is **GRANTED IN PART AND DENIED IN PART**; Plaintiffs' Second Post Judgment Petition for Attorneys Fees (Docket No. 519) is **GRANTED IN PART AND DENIED IN PART** and Plaintiffs Motion for Attorneys Fees (Docket No. 426)

relating to compliance are **GRANTED IN PART AND DENIED IN PART**. The attorneys fees requested for post-judgment compliance are granted for the hours recommended by Magistrate Judge Williams in the two report and recommendations for a total award to Plaintiffs in the amount of $16,960.50. The Plaintiffs shall also be awarded $348.41 in costs.

3. Plaintiffs' Petition to Award Attorney Fees and Costs for Report and Recommendation (Docket No. 548) is **GRANTED IN PART AND DENIED IN PART**. The attorneys fees requested are reduced as indicated in this Order for a total award to Plaintiffs in the amount of $450. The Plaintiffs shall also be awarded $10.49 in costs.

4. Defendant's Motion to Strike Affidavits of David Lloyd (Docket No. 522) is DENIED.

5. Plaintiffs shall submit a proposed judgment consistent with this Order within ten (10) days.

Dated this 24th day of March, 2000.

/s/ Edward J. Lodge
EDWARD J. LODGE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ROBERT WEBB, et al., Plaintiffs, vs. ADA COUNTY, et al., Defendants.	CASE NO CIV 91-0204 S EJL JUDGMENT (Filed April 13, 2000)

Based upon the Court's Order on Supplemental Report and Recommendation, dated March 24, 2000, IT IS HEREBY ADJUDGED AND DECREED:

That the Plaintiffs are awarded Judgment on Plaintiff's Motion for Attorney Fees (Docket No. 426) in the amount of $5,448.75, comprised of $4,470.00 for Mr. Belodoff and $978.75 for Ms. Cooper, with interest which shall accrue from September 29, 1997, at a rate of 5.6% per annum until paid in full;

That the Plaintiffs are awarded a Judgment on Plaintiffs' Supplemental Post Judgment Petition for Attorney Fees (Docket No. 440), Plaintiffs' Motion for Attorney Fees (Docket No. 426), in the amount of $17,290.50 and costs of $348.41, plus a rate of ~~5.6%~~ [6.197% EJL] per annum until paid in full from the entry of this Judgment.

DATED this 13th day of April, 2000.

/s/ Edward J. Lodge
Edward J. Lodge
United States
District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT WEBB, et al.
Plaintiffs-Appellees,
v.
ADA COUNTY, et al.,
Defendants-Appellants.

No. 00-35338
No. 00-35787
No. 00-35842

D.C. No. CV-91-00204-EJL
District of Idaho

ORDER

(Filed May 21, 2002)

Before: ALARCÓN, and SILVERMAN, Circuit Judges, and BREWSTER,[2] District Judge.

The panel as constituted above, has voted unanimously to deny the petition for rehearing. Judge Silverman has voted to deny the petition for rehearing en banc, and Judges Alarcón and Drewster have recommended the same.

The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 35.

[2] Honorable Rudi M. Brewster, Senior United States District Judge for the Southern District of California, sitting by designation.